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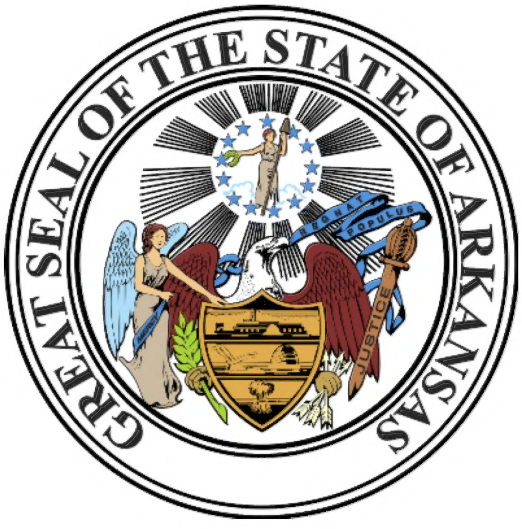
Chief Justice Roberts
Georgia, et. al., Petitioners v. Public.Resource.Org, Inc.
590 U.S. ___ ,140 S. Ct. 1498, 206 L. Ed. 2d 732



ARKANSAS MODEL JURY INSTRUCTIONS

Criminal, Volume 2

Second Edition

Arkansas Supreme Court
Committee on Criminal Jury Instructions

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March 8, 1994

Arkansas Supreme Court Committee
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Little Rock, Arkansas 72201

Dear Committee Members:

This court wishes to extend its deep gratitude to the members of the AMCI Committee for their countless hours and unselfish devotion expended in completing the 1994 revised edition of the Arkansas Model Jury Instructions -- Criminal. Your work represents an exhaustive effort to include all the new criminal legislative enactments and appellate decisions rendered since 1982, and we, along with the other members of the bench and bar, sincerely thank you for your unwavering commitment in compiling and publishing this book.

The original AMCI was researched and drafted commencing in 1970. It was finally published in 1979 and updated in 1982. Those efforts were the Supreme Court's and its AMCI Committee's first endeavors to prepare criminal pattern instructions which we hoped would serve to enhance the administration of criminal justice in Arkansas. That work product has been utilized over the past years and has indeed aided in facilitating Arkansas's criminal jury trial procedure and in reducing the number of errors when charging the jury. The present AMCI Committee's work will serve this same tradition commenced in the 1970's.

We again thank you for your time, energies and talent in giving us this excellent 1994 compilation of the AMCI.

Sincerely,

Chief Justice Jack Holt, Jr.

Justice Robert Dudley

Justice Steele Hays

Justice David Newbern

Justice Tom Glaze

Justice Donald Corbin

Justice Robert Brown

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AMCI 2d 3601
DEFINITIONS FOR CHAPTER 36

As used in this Chapter, these terms have the following meanings:

(1) "Article" means any [object] [material] [device] [substance] [or] [copy thereof] [including any] [writing] [record] [recording] [drawing] [sample] [specimen] [prototype] [model] [photograph] [microorganism] [blueprint] [map].

(2) "Building material" means lumber, a construction tool, a window, a door, copper tubing or wire, or any other material or good used in the construction or rebuilding of a building or a structure.

(3) "Copy" means any [(facsimile) (replica) (photograph) (other reproduction) of an article] [(and) (any) (note) (drawing) (or) (sketch) made (of) (from) an article].

(4) "Cost of incidental damage" means the total amount of money damages suffered by an owner of oil and gas equipment as a direct result of the theft of the oil and gas equipment, including without limitation lost income, lost profits, and cost of repair of replacement of property damage.

(5) "Deception" means:

[creating or reinforcing a false impression, including false impressions of fact, law, value, intention, or other state of mind that the defendant does not believe to be true.]

[preventing another from acquiring information which would affect his judgment of a transaction.]

[failing to correct a false impression that the defendant knows to be false and that (he [created] [reinforced]) (he knows to be influencing another to whom he stands in a fiduciary or confidential relationship).]

[failing to disclose a (lien) (adverse claim) (other legal impediment to the enjoyment of property) which the defendant (transfers) (or) (encumbers) (in consideration for the [property] [or] [service] obtained) (or) (in order to continue to deprive another of his property) (whether such impediment is or is not valid, or is or is not a matter of official record).]

[employing any other scheme to defraud.]

[Deception as to a person's intention to perform a promise shall not be inferred solely from the fact that he did not subsequently perform the promise.] [Deception does not include (falsity as to matters having no pecuniary significance) (or) (puffing by statements unlikely to deceive ordinary persons in the group addressed).]

(6) "Deprive" means:

[*to (withhold property) (cause property to be withheld) (permanently) (or)* (under circumstances such that a major portion of its [economic value] [or] [use] [or] [benefit] is [appropriated to the defendant] [or] [lost to the owner]).]

[to (withhold property) (cause property to be withheld) with the purpose to restore it only upon the payment of a reward or other compensation.]

[to (dispose of property) (use property) (or) (transfer any interest in property) under circumstances that make its restoration unlikely].

(7) "Incidental damage" means loss of income, loss of profit, or property damage.

(8) "Manufacture of a wireless device" means to produce, activate or assemble a wireless device or to modify, alter, program, or reprogram a device to be capable of acquiring or facilitating the acquisition of wireless service without the consent of the wireless service provider.

(9) "Obtain" means:

[in relation to property, to bring about a (transfer) (purported transfer) of (property) (or) (an interest in property), (whether to the defendant or another).]

[in relation to services, to secure performance thereof].

(10) "Oil and gas equipment" means machinery, drilling mud, welding equipment, pipes, fittings, generators, pumps, batteries, or other equipment or tools used in connection with the drilling, production, operation, or maintenance of oil or gas wells, or in connection with the storage or transportation of oil or gas.

(11) "Permitted construction site" means the site of construction, alteration, painting, or repair of a building or a structure for which a building permit has been issued by a city of the first class, a city of the second class, an incorporated town, or a county.

(12) "Property" means [severed real property] [or] [tangible or intangible personal property] [including] [money] [any paper or document that (represents) (embodies) anything of value] [credit card] [credit card account number].

(13) "Property of another person" means any property in which any [person] [government] **other than the defendant has a** [possessory interest] [proprietary interest] [but does not include property in the possession of the defendant in which another has only a security interest, even though legal title is in the secured party pursuant to a conditional sales contract or other security agreement].

(14) "Services" include [labor] [professional service] [transportation] [(telephone) (mail) (other public) service] [gas] [electricity] [other public utility services] [accommodations in (hotels) (restaurants) (other public accommodations)] [admission to exhibitions] [and] [use of (vehicles) (other property)].

(15) "Threat" means a menace, however communicated, to:

[(cause physical injury to any person) (or) (commit any criminal offense)]

[cause damage to any property]

[accuse anyone of a crime]

[(expose a secret) (or) (publish a fact) tending to subject any person (living or

deceased) to (hatred) (or) (contempt) (or) (shame) (or) (ridicule)]

[impair any person's (credit) (or) (business repute)]

[([take] [withhold] action as a public servant) (cause a public servant to [take] [withhold] action)]

[(testify) (or) (provide information) (withhold [testimony] [information]) with respect to a legal (claim) (defense) of another]

[(bring about) (continue) a (strike) (boycott) (other collective action) if the (property) (service) is not (demanded) (received) for the benefit of the group in whose interest the defendant purports to act]

[do any other act which would not in itself substantially benefit (the defendant) (a group the defendant purports to represent) but which is calculated to harm another person in a substantial manner with respect to (his) (health) (or) (safety) (business) (or) (employment) (calling) (or) (career) (or) (financial condition) (reputation) (a personal relationship)]. [An expression of intent to (accuse) (expose) (bring suit) (otherwise invoke official action) is not a threat if made to obtain property claimed (as [restitution] [indemnification] for harm done in the circumstances to which the [accusation] [exposure] [lawsuit] [official action] relates) (or) (as compensation for [property] [lawful services])].

(16) "Trade secret" means [the whole] [or] [any portion] [of] **any valuable** [scientific] [or] [technical] [(information) (design) (process) (procedure) (formula) (improvement)] **that is not accessible to persons other than those selected by the owner to have access for limited purposes.**

(17) "Utility" means any person or entity providing to the public gas, electricity, water, sewer, telephone, telegraph, radio, radio common carrier, railway, railroad, cable and broadcast television, video, or Internet services.

(18) "Utility property" means any component that is reasonably necessary to provide utility services, including without limitation any wire, pole, facility, machinery, tool, equipment, cable, insulator, switch, signal, duct, fiber optic cable, conduit, plant, work, system, backup deep cycle battery or other power supply, substation, transmission or distribution structure, line, street lighting fixture, generating plant, equipment, pipe, main, transformer, underground line, gas compressor, meter, or any other building or structure or part of a building or structure that a utility uses in the production or use of its services.

(19) "Value" means:

[the market value of the (property) (services) at the time and place of the offense (or)]

[if the market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense (or)]

[any (inherent) (or) (subjective) (or) (idiosyncratic) worth the (owner (or) (possessor) attaches to the property, even if the property has no market value or replacement cost.]

[in the case of written instruments, other than those having a readily ascertainable market value:

(the amount due and collectible at maturity less any part that has been satisfied, if the written instrument constitutes evidence of a debt)

(the greatest amount of economic loss that the owner might reasonably suffer by virtue of the loss of the written instrument, if the written instrument is other than evidence of a debt).]

(Except in the case of theft by receiving, if the defendant (gave consideration for) (or) (had a legal interest in) the (property) (or) (service), (the amount of the consideration) (the value of the interest) shall be deducted from the value of the (property) (service) to determine value.]

(20) "Vehicle" means any [craft] [or] [device] **designed for the transportation of** [people] [or] [property] [across] [land] [or] [water] [or] [through the air].

(21) "Wireless device" means any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications and that is capable, or has been altered, modified, programmed, or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable of acquiring or facilitating the acquisition of a wireless service without the consent of the wireless service provider. The term includes, but is not limited to, phones altered to obtain service without the consent of the wireless service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a wireless service provider.

(22) "Wireless service" includes, but is not limited to, any service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, data, writings, images and sounds, or intelligence of any nature by telephone, including cellular, personal communication services, wireless, radio, electromagnetic, photoelectronic, or photo-optical system.

(23) "Wireless service provider" means a person or entity providing commercial mobile services (i.e., cellular, Personal Communications Systems, and any other service as defined in Section 3(6) of Act 77 of 1997).

NOTE ON USE

As pointed out in Ark. Code Ann. § 5-36-102, the offense of "theft" includes many separate offenses previously known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and other similar offenses. Hence the scope of this chapter is so extensive that neither legislation nor model instructions can frame definitions sufficiently specific to fit every possible situation. For that reason, it will frequently be necessary to modify the definitions, within the intent of the statute, to fit the case being tried.

COMMENT

Ark. Code Ann. § 5-36-101; *Campbell v. State,* 300 Ark. 606, 780 S.W.2d 567

(1989). The definitions relating to wireless services are taken from the Wireless Services Theft Prevention Law (Act 1310 of 1997). Definitions are also found in § 5-36-103 and § 5-36-123.

AMCI 2d 3602
THEFT OF PROPERTY

_____ *(Defendant(s))* [is] [are] **charged with the offense of theft of property. To sustain this charge the State must prove beyond a reasonable doubt that _____ (defendant(s)):**

[Knowingly (took) (or) (exercised unauthorized control over) (made an unauthorized transfer of an interest in) the property of another person with the purpose of depriving the owner thereof.]

[Knowingly obtained the property of another person by (deception) (or) (threat) with the purpose of depriving the owner thereof.]

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

"Purpose."—A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3601 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3602-VF, AMCI 2d 3602 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from chapter 91 and a verdict form from chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3602-VF, AMCI 2d 3602 should be used in conjunction with 3602-EXP and 3602-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

If the property taken is "building material" or "scrap metal," use this instruction with AMCI 2d 3602-EXP and 3602.2-VF-PROP—Theft of Building Material and Scrap Metals.

If the property taken is "explosive material," refer to AMCI 2d 7306.3.

Ark. Code Ann. § 5-36-123 (a) was amended in 2013 to add "aids or is an accomplice" to the offense of theft of scrap metal. Instructions for accomplice liability are found in Chapter 4.

COMMENT

Ark. Code Ann. § 5-36-103. "Purpose" and "knowingly" are defined in Ark. Code Ann. § 5-2-202.

Theft of property may be a Class B felony, a Class C felony, a Class D felony, or a Class A misdemeanor.

AMCI 2d 3602-PR
THEFT OF PROPERTY—PRESUMPTION

Evidence that _____ *(defendant(s))* **knowingly concealed on** [his or her] [or] [(another person) (other persons)], _____ *(tangible personal property)* **offered for sale by** _____*(store(s) or other business establishment(s))*, **may be considered by you along with all other evidence in the case in determining whether** [he] [she] [they] **took the** _____ **(tangible personal property) with the purpose of depriving** [_____ *(the owner(s))*] [_____ *(store(s)] or other business establishment(s))*] **thereof. However, this evidence must be considered along with all the other evidence in the case and does not impose any duty upon you to find that the defendant(s) took the** _____ *(tangible personal property)* **with the purpose of depriving** [_____ *(the owner(s))*] [_____ *(store(s) or other business establishment(s))*] **thereof.**

NOTE ON USE

This presumption instruction is the counterpart of paragraph Second of AMCI 2d 3603 (Theft of Services). It is drawn from Ark. Code Ann. § 5-36-116 (Shoplifting Presumption).

COMMENT

Ark. Code Ann. § 5-36-116. This instruction does not constitute a comment on the evidence. *See Thiel v. Dove,* 229 Ark. 601, 317 S.W.2d 121 (1958).

AMCI 2d 3602-EXP
THEFT OFFENSES—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ (defendant(s)) guilty of _____ (theft offense), you will so indicate on the verdict form provided you. You will also make [a] finding[s] about [the value or type of the (property) (services) in question] [the circumstances of the offense], **as directed on the form.**

If you reach a verdict of not guilty, you will indicate this on the verdict form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3602-VF-PROP, 3602.2-VF-PROP, 3603-VF-SERV, 3604-VF-LOST PROP, or 3605-VF-REC, where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out therein. In other cases use AMCI 2d 3602-3605 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3602-VF-PROP
THEFT OF PROPERTY—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ [ ] *(defendant)* is guilty of theft of property.

_____
FOREMAN

We, the Jury, find [ ] _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall make [one] of the following findings:

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was $25,000 or more?]
YES _____
NO _____

_____
FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the property was obtained by the threat of *(serious physical injury to any person) (the destruction of* [ ] _____ *(an occupiable structure) belonging to another person)*?]
YES _____
NO _____

_____
FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the property was obtained by threat, and [ ] _____ *(Defendant)* stood in a confidential or fiduciary relationship to the person threatened?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the property was (anhydrous ammonia in any form) (or) (a product containing any percentage of anhydrous ammonia in any form)?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was more than $5,000 but less than $25,000?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county?]

YES _____

NO _____

_____

FOREMAN

If your answer is yes, then answer the following by indicating in the appropriate blank the value of the property:

Do you, the Jury, find beyond a reasonable doubt that the value of the property was ($500 or more) [ ]

(At least $100 but less than $500) [ ]

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the property was obtained by threat?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was more than $1,000 but not greater than $5,000?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that (the value of the property was $1,000 or less) (or) (the property had inherent subjective idiosyncratic value to its owner or possessor)?]

YES _____

NO _____

_____

FOREMAN

[Use for theft of oil and gas equipment under Ark. Code Ann. § 5-36-103 (b)]

[Do you, the Jury, find beyond a reasonable doubt that the property was oil and gas equipment and had a value of more than $5,000 but less than $25,000?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the property was oil and gas equipment and had a value of more than $1,000 but not greater than $5,000?]

YES _____

NO _____

_____

FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the property was oil and gas equipment and had a value of $1,000 or less?

YES _____

NO _____

_____

FOREMAN

If your answer is yes to one of the above, then answer the following:

[Do you, the Jury, find beyond a reasonable doubt that the _____ (defendant) caused more than $250 incidental damage to the owner of the oil and gas equipment during the commission of the offense?]

YES _____

NO _____

_____

FOREMAN

Do you, the Jury, find beyond a reasonable doubt that the _____ (defendant) transported the oil and gas equipment across state lines to sell or dispose of it?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

Theft of property may be a Class B felony, a Class C felony, a Class D felony, or a Class A misdemeanor. When the evidence affords the jury a rational basis for selecting a verdict of guilty from those possibilities, this verdict form should be used in conjunction with AMCI 2d 3602-EXP. Normally, the choice presented the jury will involve the value of property—*e.g.*, was the property worth more or less than $5,000—or the nature of a threat, so the jury will be choosing between two alternatives set out within the brackets. If the jury is called on to choose between threat types and property values in the same case, the instruction will need to be appropriately modified. If there is a rational basis for a conviction of the offense in only one degree, AMCI 2d 3602 should be used in conjunction with AMCI 2d 8101 and 8301-VF. *See* Note on Use to AMCI 2d 3602.

Alternatives having to do with theft of credit cards, credit card account numbers, debit cards, debit card account numbers, livestock, firearms, farm infrastructure, decorative or memorial item from cemetery (§ 5-36-103(b)(3)), and utility equipment (§ 5-36-103(b)(1)(E)) have not been set out since in most cases where the defendant is charged with one of these kinds of theft the jury will be presented with no options other than guilty or not guilty. If, however, there is a question about the value or the type of property, this instruction should be appropriately modified to set out the options available to the jury. If instructions are necessary requiring definitions of "utilities" and "utility property," they are defined in Ark. Code Ann. § 5-36-103(b)(1)(E), and the definitions appear in AMCI 2d 3601.

Theft of oil and gas equipment is a Class B, C, or D felony depending on its value and whether incidental damage of more than $250 was caused or it was transported across state lines to sell or be disposed.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. For example, if the jury finds the defendant guilty of theft of property having a value greater than $5,000 but less than $25,000, the standard Class C punishment instruction (AMCI 2d 9104) and the standard Class C verdict form (AMCI 2d 9304-VF) should be used.

If weapon enhancement is also an issue in the case, a separate verdict form should be used for submission of that issue.

If a question arises about whether a fiduciary relationship existed, an appropriate definition of this term should be given the jury.

If the property taken is "explosive material," refer to AMCI 2d 7306.3, and use in conjunction with this instruction.

(Text continued on page 36-15)

AMCI 2d 3602.1-EXP
THEFT OF PROPERTY—SERIES OF THEFTS—STAGE ONE
VERDICT FORM EXPLANATION

The State has alleged that _____ *(defendant)* committed a series of thefts of property on three or more occasions within three days. If you find _____ *(defendant)* guilty of theft of property, you will so indicate on the verdict form provided you. You will also make findings about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This form should be used in conjunction with AMCI 2d 3602 and 3602.1-VF-PROP where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 3602.1-VF-PROP. The bracketed language should be included if the state charges that the value of the property taken in at least one of a series of thefts exceeded $500.

[Repealed effective July 27, 2011].

AMCI 2d 3602.1-VF-PR
THEFT OF PROPERTY—SERIES OF THEFTS—STAGE ONE
VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of theft of property.

_____

FOREMAN

We, the Jury, find _____ (defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the property was unlawfully obtained in a series of thefts committed by _____ *(Defendant)* on three or more occasions within three days?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This form should be used in conjunction with AMCI 2d 3602 and 3602.1-EXP.

COMMENT

Ark. Code Ann. § 5-36-103(b) provides that theft of property is a Class D felony if the property is unlawfully obtained in a "criminal episode." "Criminal episode" means a series of thefts committed by the same person on three or more occasions within three days. Hence, a defendant who commits three petit thefts within three days can be convicted of a felony.

Repealed effective July 27, 2011.

AMCI 2d 3602.2-VF-PROP
THEFT OF BUILDING MATERIAL AND SCRAP METAL—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of theft of [building material] [scrap metal].

_____

FOREMAN

We, the Jury, find _____ (defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall make [one of] the following findings:

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was $25,000 or more?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the property was obtained by the threat of (*serious physical injury to any person*) (*the destruction of* _____ (*an occupiable structure*) *belonging to another person*)?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the property was obtained by threat, and _____ *(Defendant)* stood in a confidential or fiduciary relationship to the person threatened?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the property was utility property with a value of $500 or more?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was more than $5,000 but less than $25,000?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the property was obtained by threat?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the property was building material which was obtained from a permitted construction site and the value of the building material was $500 or more?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county?

YES _____

NO _____

_____

FOREMAN]

If your answer is yes, then answer the following by indicating in the appropriate blank the value of the property:

Do you, the Jury, find beyond a reasonable doubt that the value of the property was ($500 or more) [ ]

(At least $100 but less than $500) [ ]

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was more than $1,000 but not greater than $5,000?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the property was an apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the value of the property was $1000.00 or less?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt the property had inherent, subjective, or idiosyncratic value to its owner or possessor even if the property had no market value or replacement cost?

YES _____

NO _____

_____

FOREMAN]

[Use for theft of building materials under Ark. Code Ann. § 5-36-103 (b)(2)(D)]

[Do you, the Jury, find beyond a reasonable doubt that the property was building material which was obtained from a permitted construction site and had a value of $500 or more?

YES _____

NO _____

_____

FOREMAN]

[Use with enhancement under Ark. Code Ann. § 5-36-123 (e)]

[Do you, the Jury, find beyond a reasonable doubt that the _____ (Defendant) transported the scrap metal across state lines to sell or dispose of it?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the _____ (Defendant) caused incidental damage of more than $250 to the owner of the scrap metal or the property of the owner of the scrap metal while committing the theft of scrap metal?

YES _____

NO _____

_____

FOREMAN]

[Enhancement under Ark. Code Ann. § 5-36-123 (d)]

Additional findings may be needed for factual issues related to theft of scrap metal involving a generator or transmission equipment during a state of emergency. The enhancement is a mandatory fine of not less than $5,000 nor more than $50,000 and a Class A misdemeanor to a Class D felony.

_____

FOREMAN]

Definitions

(1) "Building material" means scrap metal used in the construction or rebuilding of a building or a structure. [Section 5-36-123 definition]

"Building material" means lumber, a construction tool, a window, a door, copper tubing or wire, or any other material or good used in the construction or rebuilding of a building or a structure. [Section 5-36-103(b)(2)(D)(ii)(a) definition]

(2) "Costs of incidental damage" means the total amount of money damages suffered by an owner of scrap metal as a direct result of the theft of the scrap metal, including lost income, lost profits, and costs of repair or replacement of property damage.

(3) "Incidental damage" means loss of income, loss of profit, or property damage.

(4) "Permitted construction site" means the site of construction, alteration, painting, or repair of a building or a structure for which a building permit has been issued by a city of the first class, a city of the second class, an incorporated town, or a county.

(5) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides:

(A) Firefighting and rescue;

(B) Response to natural or human-caused disaster or a major emergency;

(C) Law enforcement; or

(D) Ambulance or emergency medical services.

(6) "Public safety device" includes, but is not limited to, a traffic-signaling device or a railroad-crossing device.

(7) "Scrap metal" means copper, copper alloy, copper utility wire, any bronze, or any aluminum as described in § 17-44-101 et seq.

(8) "Utility" means any person or entity providing to the public gas, electricity, water, sewer, telephone, telegraph, radio, radio common carrier, railway, railroad, cable and broadcast television, video, or Internet services.

(9) "Utility property" means any component that is reasonably necessary to provide utility services, including without limitation any wire, pole, facility, machinery, tool, equipment, cable, insulator, switch, signal, duct, fiber optic cable, conduit, plant, work, system, substation, transmission or distribution structure, line, street lighting fixture, generating plant, equipment, pipe, main, transformer, underground line, gas compressor, meter, or any other building or structure or part of a building or structure that a utility uses in the production or use of its services.

NOTE ON USE

This instruction is to be used for additional findings that may be necessary for theft of building materials under Ark. Code Ann. § 5-36-103(b)(2)(D) and theft of scrap metal under Ark. Code Ann. § 5-36-123.

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

This instruction is to be used with AMCI 2d 3602 and 3602-EXP., and those instructions may need to be modified to incorporate terms used with the offenses of theft of building material or scrap metal, and the definitions found in sections 5-36-103 or 5-36-123.

COMMENT

Arkansas Code. Ann. § 5-36-103 (b)(2)(D) [building material]; Ark Code. Ann. § 5-36-123 [scrap metal].

There are two definitions for "building material." One is found in Ark. Code Ann. § 5-36-103 (b)(2)(D)(ii)(a) where the offense of theft of "building material" is found and the other is in section 5-36-123 where definitions related to theft of scrap metal are found. The same definition for "permitted construction site" are found in both statutes.

Theft of building material having a value of $500 or more from a permitted construction site is a Class C felony.

The classification and penalty range for theft of scrap metal shall be increased one classification if incidental damage of more than $250 was caused or the scrap metal was transported across state lines to sell or dispose of.

There is an enhancement for theft of scrap metal during a state of emergency if the theft involves a generator or transmission equipment.

For the offense of theft by receiving of scrap metal (Ark. Code Ann. § 5-36-124), use AMCI 2d 3605.

AMCI 2d 3603
THEFT OF SERVICES

_____ *(Defendant(s))* [is] [are] **charged with the offense of theft of services. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

[First: That _____ *(defendants(s))* purposely obtained _____ *(describe services)* that (he) (they) knew to be available only for compensation, by deception, threat, or other means to avoid payment; and]

[First: That _____ *(defendant(s))* had control over the disposition of _____ *(describe services)* to which (he was) (they were) not entitled, and purposely diverted such _____ *(services)* (to [his] [their] own benefit) (or) (to the benefit of another person not entitled to them); and]

Second: That [he] [they] **did so with the purpose to defraud.** [Evidence that payment for _____ *(describe service(s))* is ordinarily made immediately upon the rendering of the service(s) and that _____ *(defendant(s))* departed without paying or offering to pay for the services may be considered by you as evidence that the defendant took the services with purpose to defraud. However, this evidence must be considered along with all the other evidence in the case and does not impose any duty upon you to find that _____ *(defendant(s))* took any services with the purpose to defraud (even if the evidence is unrebutted).]

Definition

"Purposely."—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Use the last bracketed phrase only if requested by the defendant.

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3601 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3603-VF, AMCI 2d 3603 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in State Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from

(Text continued on page 36-21)

the alternatives set out in AMCI 2d 3603-VF AMCI 2d 3603 should be used in conjunction with 3603-EXP and 3603-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-36-704. "Purposely" is defined in Ark. Code Ann. § 5-2-202.

Theft of services may be a Class B felony, a Class C felony, a Class D felony, or a Class A misdemeanor.

AMCI 2d 3603-VF-SERV
THEFT OF SERVICES—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of theft of services.

_____
FOREMAN

We, the Jury, find _____ (defendant) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that:

FIRST:

The value of the service(s) was $25,000 or more.

_____
FOREMAN

[**The value of the service(s) was $25,000 or more.**

_____
FOREMAN]

[**The service(s) [was] [were] obtained by threat of [serious physical injury to any person] [the destruction of _____ *(an occupiable structure)* of another person.**

_____
FOREMAN]

[**The service(s) [was] [were] obtained by threat, and _____ *(defendant(s))* stood in a confidential or fiduciary relationship to the person threatened.**

_____
FOREMAN]

The services involved theft of utility services which [resulted in any contamination of a (line), (pipe), (waterline), (meter), (or) (other utility property)], [or] [resulted in a (spill), (dumping), (or) (release) of any hazardous materials into the environment.

_____
FOREMAN

(FIRST:) (SECOND:)

The value of the service(s) was less than $25,000 but more than $5,000.

_____
FOREMAN

The value of the services was $5,000 or less but more than $1,000.

_____
FOREMAN

The service(s) [was] [were] obtained by threat.

_____
FOREMAN

SECOND:

The service(s) involved the theft of utility services which resulted in the [destruction] [or] [damage] to the [lines], [pipes], [waterlines], [meters], [or] [other property of the utility].

_____
FOREMAN

[**The value of the services was $1,000 or less.**

_____
FOREMAN]

NOTE ON USE

Theft of services may be a Class B felony, a Class C felony, a Class D felony or a Class A misdemeanor. When the evidence affords the jury a rational basis for selecting a verdict of guilty from those possibilities, this verdict form should be used in conjunction with AMCI 2d 3603 and 3602-EXP. Normally, the choice presented the jury will involve the value of the services– *e.g.*, were the services worth more or less than $5,000–or the nature of a threat, so the jury will be choosing between two alternatives set out within the large brackets. If the jury is called on to choose between threat types and service values in the same case, the instruction will need to be appropriately modified. If there is a rational basis for a conviction of the offense in only one degree, AMCI 2d 3603 should be used in conjunction with AMCI 2d 8101 and 8301-VF. *See* Note on Use to AMCI 2d 3603.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. For example, if the jury finds the defendant guilty of theft of services having a value greater than $5,000 but less than $25,000, the standard Class C punishment instruction (AMCI 2d 9104) and the standard Class C verdict form (AMCI 2d 9304-VF) should be used.

COMMENT

Ark. Code Ann. § 5-36-103.

AMCI 2d 3604
THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE

_____ *(Defendant(s))* [is] [are] **charged with the offense of theft of property lost, mislaid, or delivered by mistake. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* **came into control of property of another person;**

Second: That _____ *(defendant(s))* [retained] [disposed of] **the property knowing it to have been** [lost] [or] [mislaid] [or] [delivered under a mistake (as to the identity of the recipient) (as to the [nature] [or] [amount] **of the** property)]; **and**

Third: That, with the purpose of depriving anyone having an interest in the property, _____ *(defendant(s))* **failed to take reasonable measures to restore the property to a person entitled to it.**

Definition

"Purpose."—A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

NOTE ON USE

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3604-VF, AMCI 2d 3604 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from chapter 91 and a verdict form from chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3604-VF, AMCI 2d 3604 should be used in conjunction with 3604-EXP and 3604-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3601 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-36-105. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Theft of property lost, mislaid, or delivered by mistake may be a Class D felony, a Class B misdemeanor, or a Class C misdemeanor.

AMCI 2d 3604-VF-LOST PROP
THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of theft of lost property.

_____
FOREMAN

We the Jury, find _____ (defendant) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that the value of the property was:

(1) $1,000 or more.

_____
FOREMAN

(2) more than $500 but less than $1,000

_____
FOREMAN

(3) $500 or less.

_____
FOREMAN

NOTE ON USE

Theft of property lost, mislaid, or delivered by mistake may be a Class D felony, a Class B misdemeanor, or a Class C misdemeanor. When the evidence affords the jury a rational basis for selecting a verdict of guilty from those possibilities, this verdict form should be used in conjunction with AMCI 2d 3604 and 3602-EXP. If there is a rational basis for a conviction of the offenses in only one degree, AMCI 2d 3604 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If the defendant is charged with theft of a credit card, use AMCI 2d 8101 and 8301-VF.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. For example, if the jury finds the defendant guilty of theft of lost property having a value greater than $1,000, the standard Class D punishment instruction (AMCI 2d 9105) and the standard Class D verdict form (AMCI 2d 9305-VF) should be used.

AMCI 2d 3605
THEFT BY RECEIVING

[ ] *(Defendant(s)) [is] [are]* charged with the offense of theft by receiving *[of scrap metal]*. To sustain this charge the State must prove beyond a reasonable doubt that [ ] (defendant(s))

[(acquired possession or control of) (or) (acquired title to) (or) (disposed of) **stolen property of another person, knowing or having good reason to believe that it was stolen.**

If you find that *(defendant(s))* [(was) (were) in unexplained possession or control of recently stolen property] [or] [acquired property for consideration known to be far below its reasonable value], you may consider that fact along with all the other evidence in the case in deciding whether [ ] *(defendant(s))* [knew] [believed] that the property was stolen.]

[or]

[Scrap Metal]

[First, (acquired possession, control, or title of) (loaned on the security of) (retained) (purchased) (disposed of) scrap metal of another person; and

Second, _____ (he) (she) knew or should have known that the scrap metal was stolen.]

Definitions

"Knowledge."—A person acts with knowledge with respect to circumstances existing at the time of his act, when he is aware that such circumstances exist.

"Scrap Metal"—means copper, copper alloy, copper utility wire, any bronze, or any aluminum.

NOTE ON USE

The last bracket is used for theft by receiving stolen scrap metal (Ark. Code Ann. § 5-36-124). AMCI 2d 3605-EXP and VF may need to be modified for use with this charge.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3605-VF, AMCI 2d 3605 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3605-VF, AMCI 2d 3605 should be used in conjunction with 3605-EXP and 3605-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

In this chapter there are so many possibly pertinent definitions that they are all

set out in AMCI 2d 3601 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Theft by receiving is codified in Ark. Code Ann. § 5-36-106. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. Theft by receiving stolen scrap metal is codified in Ark. Code Ann. § 5-36-124.

Theft by receiving may be a Class B felony, a Class C felony, a Class D felony, or a Class A misdemeanor. Theft by receiving scrap metal is a Class D felony if the value is more than $1000; otherwise, it is a Class A misdemeanor; however, a second or subsequent violation is a Class D felony. A person convicted of a felony offense is subject to an enhanced sentence of an additional term of imprisonment of 5 years at the discretion of the court if the stolen property was a nonferrous metal as define in Ark. Code Ann. §17-44-101.

AMCI 2d 3605-VF-REC
THEFT BY RECEIVING—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of theft by receiving.

_____

FOREMAN

We, the Jury, find _____ (defendant) not guilty.

_____

FOREMAN]

If your verdict is guilty, you shall make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that the value of the property was:

(1) $25,000 or more.

_____

FOREMAN

(2) More than $5,000 but less than $25,000

_____

FOREMAN

(3) More than $1,000 but less than $5,000.

_____

FOREMAN

(4) $1,000 or less.

_____

FOREMAN

[We, the Jury, find beyond a reasonable doubt that the stolen property was: (copper) (brass) (aluminum) (bronze) (lead) (zinc) (nickel) (other nonferrous metal).

YES _____

NO _____

_____

FOREMAN]

[We, the Jury, find beyond a reasonable doubt that the stolen property was: a firearm valued at $2500 or more.

YES _____

NO _____

_____

FOREMAN]

NOTE ON USE

Theft by receiving may be a Class B felony, a Class C felony, a Class D felony, or a Class A misdemeanor. When the evidence affords the jury a rational basis for selecting a verdict of guilty from those possibilities, this verdict form should be used in conjunction with AMCI 2d 3605 and 3602-EXP. If there is a rational basis for a conviction of the offense in only one degree, AMCI 2d 3605 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If the defendant is charged with theft by receiving of a credit card, use AMCI 2d 8101 and 8301-VF.

A person convicted of a felony offense is subject to an enhanced sentence of an additional term of imprisonment of 5 years at the discretion of the court if the stolen property was a nonferrous metal as define in Ark. Code Ann. §17-44-101.

If the evidence gives rise to other possible alternatives not explicitly addressed by this verdict form, appropriate modifications to the format of this instruction will be required.

A verdict of guilty having been returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. For example, if the jury finds the defendant guilty of receiving stolen property having a value greater than $5,000 but less than $25,000, the standard Class C punishment instruction (AMCI 2d 9104) and the standard Class C verdict form (AMCI 2d 9304-VF) should be used.

COMMENT

In determining the value of the property, the consideration given by the defendant for the property shall not be deducted. Ark. Code Ann. § 5-36-101 (12) (A) (ii).

[Next Page is 36-37]

AMCI 2d 3606

THEFT OF TRADE SECRET

_____ *(Defendant(s))* [is] [are] **charged with the offense of theft of trade secret. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* [(obtained) (or) (disclosed to an unauthorized person) a trade secret] [or] [without authority, (made) (or) (caused to be made) (a copy) (or) (an article) representing a trade secret]; **and**

Second: That [he] [they] **did so with the purpose of depriving the owner of the control of that trade secret.**

Definition

"Purpose."— A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

NOTE ON USE

In this chapter there are so many possible pertinent definitions that they are all set out in AMCI 2d 3601 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-36-107. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Theft of trade secret is a Class A misdemeanor.

AMCI 2d 3607

UNAUTHORIZED USE OF A VEHICLE

_____ *(Defendant(s))* [is] [are] **charged with the offense of unauthorized use of a vehicle. To sustain this charge the State must prove beyond a reasonable doubt that** _____*(defendant(s))* **knowingly** [took] [or] [operated] [or] [exercised control over] **another person's vehicle without the consent of the owner.**

Definition

"Knowingly."— A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3601 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-36-108. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Unauthorized use of a vehicle is a Class A misdemeanor.

AMCI 2d 3608

THEFT OF PUBLIC BENEFITS

_____ *(Defendant(s))* [is] [are] **charged with the offense of theft of public benefits. To sustain this charge the State must prove beyond a reasonable doubt that** _____*(defendant(s))*:

[(1) (obtained) (or) (retained) public benefits from (the Arkansas Department of Human Services) (_____ *(any state agency administering the distribution of such benefits)*)

(by means of any false statement, misrepresentation, or impersonation.) (OR)

(through failure to disclose a material fact used in making a determination as to _____ *(defendant(s))*'s qualifications to receive public benefits.)]

[(2) (received) (retained) (disposed of) public benefits from (the Arkansas Department of Human Services,) (_____ *(any state agency administering the distribution of such benefits)*,) knowing or having reason to know that the public benefits were obtained

(by means of any false statement, misrepresentation, or impersonation.)(OR)

(through failure to disclose a material fact used in making a determination as to _____ *(defendant(s))*'s qualifications to receive public benefits.)]

NOTE ON USE

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3608-VF, AMCI 2d 3608 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3608-VF, AMCI 2d 3608 should be used in conjunction with 3608-EXP and 3608-VF in stage one and, if a verdict of guilt is returned, with the appropriate stage two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-36-202.

Theft of public benefits may be a Class B felony, a Class C felony, or a Class A misdemeanor.

AMCI 2d 3608-EXP

THEFT OF PUBLIC BENEFITS — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of theft of public benefits, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3608 and 3608-VF where the evidence affords the jury a rational basis for selecting one verdict from the alternatives set out at AMCI 2d 3608-VF. In other cases, use AMCI 2d 3608 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3608-VF

THEFT OF PUBLIC BENEFITS — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of theft of public benefits.

_____

FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall also complete ONE of the following:

We, the Jury, find beyond a reasonable doubt that the value of the public benefits is:

(1) $2,500 or more.

_____

FOREMAN

(2) More than $500 but less than $2,500.

_____

FOREMAN

(3) $500 or less.

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3608-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. If the defendant is charged under the special habitual offender sections, *see* Ark. Code Ann. 5-36-204— Stage Two instructions tailored to the requirements of this section should be given to the jury.

(Text continued on page 36–47)

AMCI 2d 3609
THEFT OF WIRELESS SERVICES

_____ *(Defendant(s))* [is] [are] charged with the offense of theft of wireless services. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* purposely obtained wireless service [by the use of an unlawful wireless device] [or] [without the consent of the wireless service provider].

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3609-EXP and 3609-VF.

If the defendant is charged with having previously been convicted of theft of wireless service or of a similar state or federal offense, Stage Two instructions, as appropriately modified, should be given to the jury.

Definitions related to this instruction are found at the beginning of the chapter.

COMMENT

Ark. Code Ann. § 5-36-303.

Theft of wireless service may be a Class B felony, a Class C felony, or a Class A misdemeanor.

AMCI 2d 3609-EXP
THEFT OF WIRELESS SERVICE—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of theft of wireless service, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3609 and 3609-VF where the evidence affords the jury a rational basis for selecting one verdict from the alternatives set out in AMCI 2d 3609-VF. In other cases, use AMCI 2d 3609 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3609-VF
THEFT OF WIRELESS SERVICE—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ [ ] (defendant(s)) is guilty of theft of wireless service.

_____
FOREMAN

We, the Jury, find _____ [ ] *(defendant(s))* **not guilty.**

_____
FOREMAN

If your verdict is guilty, you shall complete [one] [two] of the following:

We, the Jury, find beyond a reasonable doubt that the value of the wireless service is:

(1) $25,000 or more.

_____
FOREMAN

(2) More than $5,000 but less than $25,000.

_____
FOREMAN

(3) More than $1,000 and not more than $5,000.

_____
FOREMAN

(4) $1,000 or less.

_____
FOREMAN

[We, the Jury, find beyond a reasonable doubt that the stolen wireless service was used to communicate a threat of damage or injury by bombing, fire, or other means likely [to place another person in reasonable apprehension of (physical injury to (himself) (herself) (or) (another person))] (or) [(damage to (his) (her) (or) (another's) [property] [or] [to create a public alarm]].

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3609-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. If the defendant is charged with at least one prior conviction of theft of wireless service or of a similar state or federal offense, Stage Two instructions tailored to the requirements of this section should be given to the jury.

AMCI 2d 3610
FACILITATING THEFT OF WIRELESS SERVICE

_____ *(Defendant(s))* [is] [are] **charged with the offense of facilitating theft of wireless service. To sustain this charge the State must prove beyond a reasonable doubt:**

First: That _____ ***(defendant(s))*** [made] [distributed] [possessed] [used] [assembled] [modified] [altered] [programmed] [or] [reprogrammed]**a wireless device;**

And, second: That _____ ***(defendant(s))*** **so acted with the purpose of**

[committing theft of wireless service]; [or]

[(acquiring) (or) (facilitating the acquisition of) wireless service without the consent of the wireless service provider]; [or]

[(concealing) (or) (assisting another to conceal) (from any wireless service provider) (or) (from any lawful authority) the (existence) (place of origin) (or) (place of destination) of a wireless communication].

[or]

First: That _____ ***(defendant(s))***

[sold] [possessed] [distributed] [gave] [transferred to another] [or] [(offered) (promoted) (or) (advertised) for sale] [a wireless device] [or] [any plans or instructions for making or assembling a wireless device]; **and**

Second: That _____ ***(defendant(s))*** **did so**

[under circumstances evidencing an intent to (use or employ the wireless device) (allow the wireless device to be used or employed)]

[or]

[(knowing) (having reason to believe) that (the wireless device is intended) (or) (the plans or instructions are intended to be used for making or assembling a wireless device that is intended) to be used]

for the purpose of [committing theft of wireless service] [or] [(acquiring) (or) (facilitating the acquisition of) wireless service without the consent of the wireless service provider]

[or] [(concealing) (or) (assisting another to conceal) (from any wireless service provider) (or) (from any lawful authority) the (existence) (place of origin) (or) (place of destination) of a wireless communication].

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3610-EXP and 3610-VF.

If the defendant is charged with having previously been convicted of this offense or of a similar state or federal offense, Stage Two instructions, as

appropriately modified, should be given to the jury.

COMMENT

Act 1310 of 1997. Ark. Code Ann. § 5-36-304.

Facilitating theft of wireless service may be a Class B felony, a Class C felony, or a Class A misdemeanor.

AMCI 2d 3610-EXP
FACILITATING THEFT OF WIRELESS SERVICE—STAGE ONE
VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of facilitating theft of wireless service, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3610 and 3610-VF where the evidence affords the jury a rational basis for selecting one verdict from the alternatives set out in AMCI 2d 3610-VF. In other cases, use AMCI 2d 3610 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3610-VF
FACILITATING THEFT OF WIRELESS SERVICE—STAGE ONE
VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant(s)) is guilty of facilitating theft of wireless service.

_____
FOREMAN

We, the Jury, find _____ (defendant(s)) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete one of the following:

We, the Jury, find beyond a reasonable doubt that the value of the wireless service is

(1) $2,500 or more.

_____
FOREMAN

(2) More than $500 but less than $2,500.

_____
FOREMAN

(3) $500 or less.

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3610-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. If the defendant is charged with at least one prior conviction of theft of wireless service or of a similar state or federal offense, Stage Two instructions tailored to the requirements of this section should be given to the jury.

CHAPTER 37

FRAUD

SYNOPSIS

3701. Definitions For Chapter 37

3702. Forgery in the First Degree

3702-A. Forgery in the Second Degree

3703. Falsifying Business Records

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3708-EXP. Fraudulent Use of a Credit or Debit Card—Stage One Verdict Explanation—Multiple Possible Verdicts

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3709. Unlawfully Using Slugs

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3714. Defrauding Judgment Creditors

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3715-EXP. Defrauding a Materialman—Stage One Verdict Explanation—Multiple Possible Verdicts

3715-VF. Defrauding a Materialman—Stage One Verdict Form—Multiple Possible Verdicts

3716. Criminal Use of Property or Laundering Criminal Proceeds

3717. Financial Identity Fraud

3717-EXP. Financial/Non-Financial Identity Fraud Explanation—Multiple Possible

Verdicts

3717–VF. Financial/Non-Financial Identity Fraud Explanation—Multiple Possible Verdicts

3717.1. Non-Financial Identity Fraud

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3719. Using Software to Falsify Electronic Records

3720. Insurance Fraud by Use of a Procurer

3720-A. Prohibited Activity by a Procurer

3721. Unlawful Possession Of A Skimmer

(Text continued on page 37-3)

AMCI 2d 3701
DEFINITIONS FOR CHAPTER 37

As used in this Chapter, these terms have the following meanings:

(1) "Coin machine" means a [coin box] [turnstile] [vending machine] [receptacle] [(mechanical) (or) (electronic) device] **designed to receive a** [(coin) (or) (bill) of a certain denomination] [or] [token made for the purpose], **and in return for the** [insertion] [or] [deposit] **thereof,** [to offer] [or] [to provide] [or] [to assist in providing] [or] [to permit the acquisition of] [property] [(public) (or) (private) service].

(2) "Credit card" means any [instrument] [or] [device] **issued with or without fee by an issuer for use in obtaining** [money] [or] [services] [or] [anything else of value] **on credit.**

(3) "Deception" means:

[creating or reinforcing a false impression, including false impressions of fact, law, value, intention, or state of mind that the defendant does not believe to be true.]

[preventing another from acquiring information which would affect his judgment of a transaction.]

[failing to correct a false impression that the defendant knows to be false and that (he [created] [or] [reinforced]) (he knows to be influencing another to whom he stands in a fiduciary or confidential relationship).]

[failing to disclose a (lien) (or) (adverse claim) (or) (other legal impediment to the enjoyment of property) which the defendant (transfers) (or) (encumbers) ([in consideration for the (property) (or) (service) obtained] [in order to continue to deprive another of his property]) (whether such impediment is or is not valid, or is or is not a matter of official record).]

[employing any other scheme to defraud.]

[Deception as to a person's intention to perform a promise shall not be inferred solely from the fact that he did not subsequently perform the promise.] [Deception does not include (falsity as to matters having no pecuniary significance) (or) (puffing by statements unlikely to deceive ordinary persons in the group addressed).]

(4) "Enterprise" means any entity of [one] [or more] [corporate] [or other] **person(s) engaged in** [business] [commercial] [professional] [industrial] [charitable] [social] [political] [or] [governmental] **activity.**

(5) "Financial institution" means any [organization] [or] [enterprise] **held out to the public as a** [place of deposit of funds] [or] [medium of savings].

(6) "Slug" means an object which by virtue of its [size] [or] [shape] [or] [any other quality] **is capable of being** [inserted] [or] [deposited] [or] [otherwise used] **in a coin machine as a substitute for a genuine** [coin] [or] [bill] [or] [token]. [The value of a slug shall be deemed to be the value of the (coin) (or) (bill) (or)

(token) for which it is capable of being substituted.]

(7) **"Utter" means to** [transfer] [or] [pass] [or] [deliver] [or] [cause to be (transferred) (or) (passed) (or) (delivered)] [or] [attempt to (transfer) (or) (pass) (or) (deliver)] **to another person any written instrument.**

(8) "Value" means:

[the market value of the (property) (or) (services) at the time and place of the offense (or)]

[if the market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense]

[in the case of written instruments (other than those having a readily ascertainable market value):

(the amount due and collectible at maturity less any part that has been satisfied, if the written instrument constitutes evidence of a debt) (or)

(the greatest amount of economic loss that the owner might reasonably suffer by virtue of the loss of the written instrument, if the written instrument is other than evidence of a debt).]

[If the defendant (gave consideration for) (or) (had a legal interest in) the (property) (or) (service), (the amount of the consideration) (the value of the interest) shall be deducted from the value of the (property) (service) to determine value.]

(9) "Written instrument" means any [paper] [document] [or] [other material] **containing** [written] [or] [printed] **matter** [or its equivalent] [and shall include any (money) (token) (stamp) (seal) (badge) (trademark) (retail sales receipt) (Universal Product Code) (or other [evidence] [or] [symbol] of [value] [right] [privilege] [or] [identification]) **which is capable of being used to the** (advantage) (or) (disadvantage) of any person].

(10) "Electronic cash register" means a device that keeps a register or supporting document by means of an electronic device or comp system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data or a transaction report.

(11) "Transaction data" means information concerning one or more sales transactions, including without limitation the following:

(A) The items purchased by each customer;

(B) The price for each item purchased;

(C) A taxability determination for each item purchased;

(D) A segregated tax amount for each taxed item purchased;

(E) The amount of cash or credit tendered for each purchase;

(F) The net amount returned to the customer in change;

(G) The date and time of the purchase;

(H) The name, address, and identification number of the vendor; and

(I) The receipt or invoice number of the transaction.

(12) "Transaction report" means a report that includes without limitation:

(A) The sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of the day or shift; and

(B) Each action at an electronic cash register that is stored electronically.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out here instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-101.

AMCI 2d 3702
FORGERY IN THE FIRST DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of forgery in the first degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ **(defendant(s))** [drew] [made] [or] [completed] [or] [altered] [or] [counterfeited] [or] [possessed] [or] [uttered] **a written instrument that** [purported to be] [or] [was calculated (to become) (or) (to represent if completed)] the act of [a person who did not authorize that act] [a fictitious person] [or] [a person who authorized an act that was not authorized by law];

Second: That the written instrument so [drawn] [made] [or] [completed] [or] [altered] [or] [counterfeited] [or] [possessed] [or] [uttered] **was**

[(money) (a security) (a postage stamp) (a revenue stamp) (_____) *(other instrument)* issued by a government;]

[(a) (stock) (bond) (_____) *(similar instrument)* representing (an interest in property) (or) (a claim against a corporation [or its property]);]

And, third: That [he] [they] **did so with the purpose to defraud.**

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-201. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

The former offenses of forgery, uttering a forged instrument, and possessing a forged instrument are now consolidated into one offense. *See McGirt v. State*, 289 Ark. 7, 708 S.W.2d 620 (1986).

Forgery in the first degree is a Class B felony.

AMCI 2d 3702-A
FORGERY IN THE SECOND DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of forgery in the second degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ (defendant(s)) [drew] [made] [or] [completed] [or] [altered] [or] [counterfeited] [or] [possessed] [or] [uttered] **a written instrument that** [purported to be] [or] [was calculated (to become) (or) (to represent if completed)] the act of [a person who did not authorize that act] [a fictitious person] [or] [a person who authorized an act that was not authorized by law];

Second: That the written instrument so [drawn] [made] [or] [completed] [or] [altered] [or] [counterfeited] [or] [possessed] [or] [uttered] **was:**

[(a) (deed) (will) (or) (codicil) (contract) (an assignment) (check) (commercial instrument) (credit card) (_____) *(other written instrument)* that ([did] [or] [might] [evidence] [create] [transfer] [terminate] [or] [otherwise affect] a legal [right] [interest] [obligation] [or] [status]);]

[(a public record) (an instrument [filed] [or] [required by law to be filed] [or] [legally entitled to be filed] in a public office or with a public servant);]

[a written instrument officially (issued) (or) (created) by a (public office) (or) (public servant) (or) (government agent);]

And, third: That [he] [they] **did so with the purpose to defraud.**

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-201. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Forgery in the second degree is a Class C felony.

(Text continued on page 37-9)

AMCI 2d 3703
FALSIFYING BUSINESS RECORDS

_____*(Defendant(s))* [is] [are] **charged with the offense of falsifying business records. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)):

[(Made) (or) (caused to be made) a false entry in the business records of an enterprise;]

[(Altered) (erased) (obliterated) (deleted) (removed) (or) (destroyed) a true entry in the business records of an enterprise;]

[Omitted to make a true entry in the business records of an enterprise in violation of a duty to do so which (he) (they) knew to be imposed upon (him) (them) (by law) (or) (by the nature of [his] [their] position);]

[(Prevented the making) (or) (caused the omission) of a true entry in the business records of an enterprise;]

And second: That [he] [they] **did so with the purpose to defraud or injure.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-202. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Falsifying business records is a Class A misdemeanor.

AMCI 2d 3704
DEFRAUDING SECURED CREDITORS

_____*(Defendant(s))* [is] [are] **charged with the offense of defrauding [a] secured creditor[s]. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** [destroyed] [removed] [canceled] [encumbered] [transferred] [or] [_____]*(otherwise disposed of)* **property subject to a security interest; and**

Second: That [he] [they] **did so with the purpose of hindering enforcement of that security interest.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-203. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Defrauding secured creditors is a Class D felony.

AMCI 2d 3705
FRAUD IN INSOLVENCY

_____*(Defendant(s))* [is] [are] **charged with the offense of fraud in insolvency. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)) knew that proceedings [had been] [or] [were about to be instituted] **for the appointment of** [a receiver] [or] [_____]*(other person)* **entitled to administer property for the benefit of creditors** [or that any other composition or liquidation for the benefit of creditors (had been) (or) (was about to be) made];

Second: That_____(defendant(s)), with that knowledge:

[(Destroyed) (removed) (concealed) (encumbered) (transferred) (acquired) (or) (_____)*(otherwise dealt with)* any property with the purpose of defeating or obstructing the claim of any creditor (or otherwise obstructing the operation of any law relating to administration of property for the benefit of creditors);]

[Falsified any writing or record relating to the property;]

[(Misrepresented) (or) (refused to disclose) to (a receiver) (or) (_____)*(other person)* entitled to administer property for the benefit of creditors, (the [existence] [or] [amount] [or] [location] of the property) (or) ([any] [other] information which [he] [they] could be legally required to furnish to the [receiver] [or] [_____]*(other person)*);]

And third: That_____(defendant(s)) did so with the purpose to defraud.

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-204. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Fraud in insolvency is a Class D felony.

AMCI 2d 3706
ISSUING A FALSE FINANCIAL STATEMENT

_____*(Defendant(s))* [is] [are] **charged with the offense of issuing a false financial statement. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)):

[(Made) (or) (delivered) a written instrument that described (his) (their) (or) (another person's) (financial condition) (or) (ability to pay), knowing the instrument was inaccurate in some material respect;]

[Represented in writing that a written instrument that described a person's (financial condition) (or) (ability to pay) was accurate with respect to that person's (financial condition) (or) (ability to pay), knowing the instrument was inaccurate in some material respect;]

And second: That [he] [they] **did so with the purpose to defraud or injure.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-205. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Issuing a false financial statement is a Class A misdemeanor.

AMCI 2d 3707
RECEIVING DEPOSITS IN A FAILING FINANCIAL INSTITUTION

_____*(Defendant(s))* [is] [are] **charged with the offense of receiving deposits in a failing financial institution. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** [was] [were] [an] [officer(s)] [a] [manager(s)] [(a) (person[s]) participating in the direction] **of a financial institution;**

Second: That_____**(defendant(s)) knowingly** [received] [or] [permitted the receipt of] [a deposit] [or] [an investment]**, knowing that the institution was insolvent; and**

Third: That [he] [they] **did so without disclosing the true financial condition of the institution.**

Definition

"Knowingly."—A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-206. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Receiving deposits in a failing financial institution is a Class A misdemeanor.

AMCI 2d 3708
FRAUDULENT USE OF A CREDIT OR DEBIT CARD

_____*(Defendant)* **is charged with the offense of fraudulent use of a** (credit card) (debit card). **To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant) used a (credit card) (credit card account number) (debit card) (debit card account number) to obtain (property) (or) (services) **with knowledge that:**

[(the card) (the account number) was stolen.]

[(the card) (the account number) had been (revoked) (or) (cancelled).]

[(the card) (the account number) was forged.]

[the use of (the card) (the account number) was unauthorized by (either) (the issuer) (or) (the person to whom the card was issued).]

And second: That_____(Defendant) did so with the purpose to defraud.

Definition

"Purpose." — A person acts with purpose with respect to his conduct or as a result thereof when it is his conscious objective to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3708-VF, AMCI 2d 3708 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3708-VF, AMCI 2d 3708 should be used in conjunction with 3708-EXP and 3708-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-37-207. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Fraudulent use of a credit or debit card may be a Class C felony or a Class A misdemeanor. Act 516 of 1997 permits the state to seek a Class B felony

conviction under § 5-36-103(b) for theft of property in excess of $2,500 with a credit card or account number. *See* notes to § 5-36-103(b).

AMCI 2d 3708-EXP
FRAUDULENT USE OF A CREDIT OR DEBIT CARD — STAGE ONE
VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find_____(Defendant) guilty of fraudulent use of a (credit card) (debit card), **you will so indicate on the verdict form provided to you. You will also make** (a) **finding** (s) **about the circumstances of the offense as directed on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3708 and 3708-VF where the evidence affords the jury a rational basis for selecting a verdict from the possibilities set out in AMCI 2d 3708-VF. In other cases, use AMCI 2d 3708 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3708-VF
FRAUDULENT USE OF A CREDIT OR DEBIT CARD—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ [ ] (defendant) is guilty of fraudulent use of a (credit card) (debit card).

_____
FOREMAN

We, the Jury, find _____ [ ] (defendant) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

Do you, the Jury, find beyond a reasonable doubt that the value of all money, goods, or services obtained (during any six-month period) is

(1) $25,000 or more?

_____
FOREMAN

(2) More than $5,000 but less than $25,000?

_____
FOREMAN

(3) More than $1,000 but not more than $5,000?

_____
FOREMAN

(4) $1000 or less?

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3708-EXP.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

COMMENT

Fraudulent use of a credit or debit card may be a Class B, C, or D felony or a Class A misdemeanor.

(Text continued on page 37-25)

AMCI 2d 3709
UNLAWFULLY USING SLUGS

_____*(Defendant(s))* [is] [are] **charged with the offense of unlawfully using slugs. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)):

[Obtained (property) (or) (a service) (sold) (or) (offered) by means of a coin machine by (inserting) (depositing) (or) (using) (a slug) (or) (slugs) in that machine;]

[(Made) (possessed) (or) (disposed of) (a slug) (or) (slugs) with the purpose of enabling a person to use (it) (them) fraudulently in a coin machine;]

And second: That [he] [they] **did so with the purpose to defraud.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Unlawfully using slugs may be a Class C felony or a Class A misdemeanor. When the evidence affords the jury a rational basis for selecting a verdict of guilty from those possibilities, instructions patterned after AMCI 2d 3708-EXP and 3708-VF should be given.

Where the evidence does not afford the jury the option of selecting one verdict from more than one possibility, AMCI 2d 3709 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

COMMENT

Ark. Code Ann. § 5-37-212. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Unlawfully using slugs may be a Class C felony or a Class A misdemeanor.

AMCI 2d 3710
CRIMINAL IMPERSONATION IN THE FIRST DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of criminal impersonation in the first degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))*:

[Pretended to be a law enforcement officer by (wearing) (or) (displaying), without authority, any (uniform) (or) (badge) by which law enforcement officers are lawfully distinguished;]

[Used a (motor vehicle) (or) (motorcycle) (designed) (equipped) (or) (marked) with an emblem, logo, marking, decal, insignia, or design so as to resemble a (motor vehicle) (or) (motorcycle) belonging to a (federal) (state) (or) (local law) enforcement agency or law enforcement officer;]

And second: That he did so with the purpose to induce another person to submit to his pretended official authority for the purpose of [injuring] [or] [defrauding] that person.

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious objective to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-208. "Purpose" is defined in Ark. Code Ann. § 5-2-202. Criminal impersonation in the first degree is a Class D felony.

AMCI 2d 3710-A
CRIMINAL IMPERSONATION IN THE SECOND DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of criminal impersonation in the second degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))*:

[assumed a false identity;]

[pretended to be a representative of some person or organization;]

[pretended to be an (officer) (or) (employee) of the government other than a law enforcement officer;]

[pretended that [he] [she] was a law enforcement officer when in fact [he] [she] was not;]

[pretended to have a (handicap) (or) (disability);]

[pretended that [he] [she] was a member of the United States Armed Forces or National Guard;] and

Second: That [he] [they] did an act in [his] [their] pretended or assumed capacity or character with the purpose of injuring, defrauding, harassing, or intimidating another person.

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious objective to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-208. "Purpose" is defined in Ark. Code Ann. § 5-2-202. Criminal impersonation in the second degree is a Class A misdemeanor except if the victim of the offense is an animal owner and the animal is seized as a result of the offense in which case the offense is a Class D felony.

AMCI 2d 3710-B
CRIMINAL IMPERSONATION IN AN ELECTION

_____ *(Defendant)* is charged with the offense of criminal impersonation in an election. To sustain this charge the State must prove the following beyond a reasonable doubt:

_____ *(Defendant)* knowingly impersonated another person in an attempt to vote in a (city) (school district) (county) (state) (or) (federal) election.

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

COMMENT

Act 1166 of 2015; Ark. Code Ann. § 5-55-602. Criminal impersonation in an election is a Class D felony.

(Text continued on page 37-31)

AMCI 2d 3711
CRIMINAL SIMULATION

_____*(Defendant(s))* [is] [are] **charged with the offense of criminal simulation. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** [made] [altered] [represented] _____*(any object)* **in such fashion that it appeared to have** [an antiquity] [a rarity] [a source] [an authorship] [an ingredient] [or] [a composition] **that it did not in fact have;** [or (possessed) (or) (transferred) an object so simulated with knowledge of its true character]; **and**

Second: That [he] [they] **did so with the purpose to defraud or injure.**

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Criminal simulation may be a Class D felony or a Class A misdemeanor. When the evidence affords the jury a rational basis for selecting a verdict of guilty from those possibilities, instructions patterned after AMCI 2d 3708-EXP and 3708-VF should be given.

Where the evidence does not afford the jury the option of selecting one verdict from more than one possibility, AMCI 2d 3711 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

COMMENT

Ark. Code Ann. § 5-37-213. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Criminal simulation may be a Class D felony or a Class A misdemeanor.

AMCI 2d 3712
CRIMINAL POSSESSION OF A FORGERY DEVICE

_____*(Defendant(s))* [is] [are] charged with the offense of criminal possession **of a forgery device. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** [made] [or] [possessed] any [device] [apparatus] [equipment] [or] [_____]*(other article)* **capable of or adaptable to a use in forging written instruments; and**

Second: That [he] [they] **did so with the purpose of** [using it (himself) (themselves)] [or] [aiding or permitting another to use it] **to commit forgery.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-209. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Criminal possession of a forgery device is a Class C felony.

AMCI 2d 3713
OBTAINING SIGNATURE BY DECEPTION

_____*(Defendant(s))* [is] [are] charged with the offense of obtaining a **signature by deception. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s)) obtained by deception the** [signing] [or] [execution] **of a written instrument affecting the pecuniary interest of**_____**(any person); and**

Second: That [he] [they] **did so with the purpose to defraud.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 3701 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-210. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Obtaining signature by deception is a Class D felony.

AMCI 2d 3714
DEFRAUDING JUDGMENT CREDITORS

_____*(Defendant(s))* [is] [are] **charged with the offense of defrauding judgment creditors. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)):

[Moved property to prevent its being levied upon by an execution;] [(concealed) (assigned) (or) (conveyed) (or) (_____)*(otherwise disposed of)* property to prevent it from being made liable for the payment of a judgment;]

Second: That [he] [they] **did so with knowledge that civil proceedings** [had been] [or] [were about to be] **instituted; and**

Third: That [he] [they] **did so with the purpose to defraud.**

Definition

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-211. The Commentary to this section explains its relationship to § 5-37-203 (defrauding secured creditors). "Purpose" is defined in Ark. Stat. Ann. § 5-2-202.

Defrauding judgment creditors is a Class D felony.

AMCI 2d 3715
DEFRAUDING A MATERIALMAN

_____*(Defendant(s))* [is] [are] **charged with the offense of defrauding a materialman. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: that, being the [principal contractor] [or] [subcontractor] _____*(defendant(s))* **knowingly or wilfully failed to pay any** [supplier] [or] [subcontractor] **for materials or goods furnished to the project within thirty (30) days of final receipt of payment under the contract; and**

Second: That [he] [they] **did so with the purpose to defraud.**

Definitions

"Materialman." — A materialman is a person who has furnished materials or supplies used in the construction or repair of a building or other structure.

"Knowingly." — A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

"Wilfully." — Wilfully means deliberately or intentionally.

"Purpose." — A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

This section does not apply to principal contractors or subcontractors covered by Ark. Code Ann. § 22-9-101 *et seq.* (Public Works). Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3715-VF, AMCI 2d 3715 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3715-VF, AMCI 2d 3715 should be used in conjunction with 3715-EXP and 3715-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-37-525.

Defrauding a materialman is a Class D felony if the amount is equal to or greater than five thousand dollars ($5,000); otherwise, defrauding a materialman is a Class A misdemeanor.

AMCI 2d 3715-AD
DEFRAUDING A MATERIALMAN — AFFIRMATIVE DEFENSE

_____*(Defendant(s))* assert(s) an affirmative defense to the charge of defrauding a materialman. To establish this affirmative defense, [he] [they] **must prove that:**

[_____*(Defendant(s))* [has] [have] **given notice of a dispute in the** [terms] [conditions] [payment] [or] [quality of goods] [to the contracting consumer] [or] [to the (supplier) (or) (subcontractor)].

[_____*(Defendant(s))* [has] [have] **is good faith sought relief in federal court under the bankruptcy laws of the United States, prior to the expiration of the thirty (30) days after receipt of payment under the contract.]**

_____*(Defendant(s))* [has] [have] **the burden of proving an affirmative defense by a preponderance of the evidence, unless the affirmative defense is so proved by other evidence in the case. "Preponderance of the evidence" means the greater weight of evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If the evidence with regard to the affirmative defense appears to be equally balanced, or if you cannot say upon which side it weighs heavier, then the affirmative defense has not been established.**

If you find that this defense has been established [by (either) (any) defendant], **then you shall find** [that defendant] [_____]*(defendant)* **not guilty of defrauding a materialman.**

Whatever may be your finding as to this defense, you are reminded that the State still has the burden of establishing the guilty [_____]*(defendant)* [each defendant] **upon the whole case beyond a reasonable doubt.**

COMMENT

Ark. Code Ann. § 5-37-525(d).

The Committee concluded that the statute, reasonably interpreted, makes the bankruptcy defense available to any defendant, although a literal reading of the statute indicates that the defense is available only to the contractor.

AMCI 2d 3715-EXP
DEFRAUDING A MATERIALMAN — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find_____(defendant(s)) guilty of defrauding a materialman, you will so indicate on the verdict form provided you. You will also make [a] **finding(s) about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction in AMCI 2d 3715 and 3715-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in 3715-VF. In other cases, use AMCI 2d 3715 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3715-VF
DEFRAUDING A MATERIALMAN — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that_____(defendant) is guilty of defrauding a materialman.

_____

FOREMAN

We, the Jury, find_____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the value of the materials or goods furnished by the supplier or subcontractor was $5,000 or more?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3715-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 3716
CRIMINAL USE OF PROPERTY OR LAUNDERING CRIMINAL PROCEEDS

_____*(Defendant(s))* [is] [are] **charged with the offense of criminal use of property or laundering criminal proceeds. To sustain this charge the State must prove beyond a reasonable doubt that_____(defendant(s)) knowingly:**

[(conducted) (attempted to conduct) a transaction involving criminal proceeds which were derived from (a crime of [violence] [pecuniary gain]) (_____)*(crime of violence or pecuniary gain)* or which were represented to be criminal proceeds from (a crime of [violence] [pecuniary gain]) (_____)*(crime of violence or pecuniary gain)* with the intent to (conceal the location, source, ownership, or control of the criminal proceeds) (or) (avoid a reporting requirement under state or federal law) (or) (acquire any interest in the criminal proceeds).] [or]

[(used) (made available for use) any property in which (he) (they) had any ownership or lawful possessory interest to facilitate (a crime of [violence] [pecuniary gain]) (_____)*(crime of violence or pecuniary gain).*]

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

"Conducts" means initiating, concluding, or participating in initiating or concluding a transaction.

"Transaction" means any acquisition or disposition of property by whatever means, including a purchase, sale, trade, investment, payment, loan, pledge, gift, transfer, delivery, deposit, withdrawal, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer or delivery by, through, or to a financial institution, by whatever means effected.

"Monetary instruments" means any coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

"Criminal proceeds" means anything and everything of value furnished, or intended to be furnished, in exchange for criminal conduct or contraband received in violation of state or federal law and property of profits traceable to such an exchange.

"Contraband" means any property, funds, or monetary instruments which are criminal proceeds or which were otherwise used with the knowledge and consent of the owner to facilitate a violation of this statute as well as all related records and any other article possessed under circumstances prohibited by law.

"Crime of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or persons, specifically including rape.

"Crime of pecuniary gain" means any violation of Arkansas law that results, or was intended to result, in the defendant's receiving income, benefit, property, money, or anything of value.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

The list of acquisitions and dispositions of property in the definition of "transaction" is not exclusive. Other forms of acquisition or disposition may be included in the definition where appropriate.

The court should instruct the jury on the elements of the crime of violence or pecuniary gain.

COMMENT

Ark. Code Ann. §§ 5-42-201 *et seq.*

An attorney who represents a criminal defendant or person who he reasonably believes may become a criminal defendant may not be prosecuted for receiving payment for services rendered to that person in a criminal proceeding or for dealing with matters that might reasonably become the subject of a criminal proceeding. A licensed attorney may maintain this as a defense at trial and have the jury instructed accordingly. Ark. Code Ann. §§ 5-42-204(d).

Criminal use of property or laundering criminal proceeds is a Class C felony.

AMCI 2d 3717
FINANCIAL IDENTITY FRAUD

_____ *(Defendant)* is charged with the offense of financial identity fraud. To sustain this charge the State must prove beyond a reasonable doubt:

[First: That _____ *(defendant)* (for (his) (her) benefit) (or) (for the benefit of a third party) (accessed) (obtained) (recorded) (submitted to a financial institution) another person's identifying information;

Second: That _____ *(defendant)* did so with the purpose to (create) (obtain) (or) (open) (a credit account) (a debit account) (or) (financial resource); and

Third: That _____ *(defendant)* did so without the authorization of the other person.]

[First: That _____ *(defendant)* used (a scanning device) (a re-encoder) (a skimmer);

Second: That _____ *(defendant)* did so for the purpose of appropriating (a financial resource) (financial sight order information) (payment card information) of another person (to (his) (her) own use) (or) (to the use of a third party); and

Third: That _____ *(defendant)* did so without the authorization of the other person.]

[First: That _____ *(defendant)* transferred to another person (a financial resource) (financial sight order information) (payment card information);

Second: That _____ *(defendant)* did so knowing that the other person was not entitled to obtain or possess the (financial resource) (financial sight order information) (payment card information); and

Third: That _____ *(defendant)* did so without the authorization of the other person.]

Definitions

"Check" means a written unconditional order to pay a sum certain in money drawn on a bank payable on demand and signed by the drawer.

"Debit card" means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at the financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

"Financial institution" includes, without limitation, a credit card company, bank, or any other type of lending or credit company institution.

"Financial resource" includes, without limitation, a credit card, bank, debit card, or any other type of line or credit or loan.

"Financial sight order or payment card information" means financial informa-

tion that is: contained on either side of a check or similar sight order or payment card, or encoded on the magnetic strip or stripe of a payment card.

"Identifying information" includes, without limitation, social security numbers, driver's license numbers, checking account numbers, savings account numbers, credit card numbers, debit card numbers, personal identification numbers, electronic identification numbers, digital signatures, or any other numbers or information that can be used to access a person's financial resources.

"Payment card" means a debit card or credit card.

"Purpose" means a person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card, or any electronic medium that allows an authorized transaction to occur.

"Scanning devices" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

"Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner financial sight order or payment card information.

"Elder person" means a person who is sixty (60) years of age or older.

"Disabled person" means a person who has a *physical or mental impairment* which *substantially limits* one or more of such person's *major life activities.*

"Physical or mental impairment" means any of the following:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(C) The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

"Substantially limits" means substantially interferes with or affects over an extended period of time. Minor temporary ailments or injuries shall not be considered physical or mental impairments which substantially limit a person's

major life activities. Examples of minor temporary ailments are colds, influenza, sprains, or minor injuries.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

NOTE ON USE

The definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-227 and definitions are found in this section except for the definitions of "disabled person," "elder person," and related terms which are found in Ark. Code Ann. § 4-88-201. See Ark. Code Ann. § 4-60-101 for definition of "check" and § 4-88-201 for "debit card."

Financial identity fraud is a Class C felony unless the victim is an elder person or a disabled person in which case the offense is a Class B felony.

It is not a violation of this section for a person to obtain another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

The court may order restitution.

(Text continued on page 37-51)

AMCI 2d 3717-EXP
FINANCIAL/NON-FINANCIAL IDENTITY FRAUD EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find (defendant) guilty of [financial] [non-financial] identity fraud, you will so indicate on the verdict form provided to you. [You will also make a finding about the circumstances of the offense as directed on the form.]

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3717, 3717.1 and 3717-VF where there is a factual issue as to the victim's status. See Ark. Code. Ann. § 5-37-227.

AMCI 2d 3717-VF
FINANCIAL/NON-FINANCIAL IDENTITY FRAUD EXPLANATION — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that (defendant) is guilty of [financial] [non-financial] identity fraud.

_____
FOREMAN

We, the Jury, find (defendant) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that (victim) was [an elder person] [a disabled person]?

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3717, 3717.1, and 3717-EXP where there is a factual issue as to the victim's status. Definitions of "elder person" and "disabled person" are found in AMCI 2d 3717. Financial identity fraud is a Class C felony unless the victim is an elder person or a disabled person in which case the offense is a Class B felony. Non-financial identify fraud is a Class D felony unless the victim is an elder person or a disabled person in which case the offense is a Class C felony.

AMCI 2d 3717.1
NON-FINANCIAL IDENTITY FRAUD

_____ (Defendant) **is charged with the offense of non-financial identity fraud. To sustain this charge the State must prove beyond a reasonable doubt:**

First: That _____ (defendant) knowingly obtained another person's identifying information;

Second: That _____ (defendant) used the identifying information [(to avoid apprehension or criminal prosecution) (to harass another person) (to obtain or to attempt to obtain (a good) (a service) (real property) (medical information) of another person)] [for an unlawful purpose]; and

Third: That _____ (defendant) did so without the authorization of _____ (victim).

NOTE ON USE

Refer to the Definitions, Note on Use and Comment to AMCI 2d 3717.

COMMENT

Non-financial identify fraud is a Class D felony unless the victim is an elder person or a disabled person in which case the offense is a Class C felony. The court may order restitution.

AMCI 2d 3718
LOTTERY FRAUD

[ ] *(Defendant(s))* [is] [are] **charged with the offense of lottery fraud. To sustain this charge the State must prove the following beyond a reasonable doubt:**

[**First: That** [ ] (defendant(s)) **falsely** (made) (altered) (forged) (uttered) (passed) (counterfeited) **a ticket or share in a lottery; and**

Second: That [he] [she] [they] **did so with the purpose to defraud the Office of the Arkansas Lottery.**]

[or]

[**That** [ ] (defendant(s)) **purposely influenced the winning of a lottery prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.**]

Definitions

"Lottery" means a game of chance approved by the Office of the Arkansas Lottery and includes without limitation:

(1) An instant ticket;

(2) A draw game;

(3) Participation in a multistate or multisovereign game; and

(4) A raffle.

"Lottery" does not include:

(1) Casino gambling;

(2) A video lottery;

(3) Pari-mutuel wagering on horse racing or greyhound racing governed by the Arkansas Horse Racing Law, or the Arkansas Greyhound Racing Law, whether the pari-mutuel wagering is on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(4) Wagering on electronic games of skill under the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act; or

(5) Conducting or participating in charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act.

"Share" means any intangible evidence of participation in a lottery.

"Ticket" means any tangible evidence issued by a lottery to provide participation in a lottery.

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definitions should be given when requested by counsel or when the court

feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-55-501. "Purpose" is defined in Ark. Code. Ann. § 5-2-202. "Lottery," "ticket," and "share" are defined in the Arkansas Scholarship Lottery Act (§ 23-115-103).

Lottery fraud is a Class D felony. In addition to the fine for a conviction under § 5-4-201, a person convicted of a violation of this section is subject to an additional fine of not more than fifty thousand dollars ($50,000).

AMCI 2d 3719
USING SOFTWARE TO FALSIFY ELECTRONIC RECORDS

_____*(Defendant)* is charged with the offense of using software to falsify electronic records. To sustain this charge, the State must prove the following things beyond a reasonable doubt:

First, _____*(Defendant)* knowingly [manufactured] [sold] [rented] [leased] [made available] [purchased] [installed] [transferred][possessed] [or] [used] software [or any other device or mechanism] designed to falsify the electronic records of an electronic cash register [or other point-of-sale system]; and

Second, _____ *(he)(she)* did so for the purpose of evading a tax due under Arkansas law.

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purpose."—A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

"Electronic cash register" means a device that keeps a register or supporting document by means of an electronic device or comp system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data or a transaction report.;

"Transaction data" means information concerning one or more sales transactions, including without limitation the following:

(A) The items purchased by each customer;

(B) The price for each item purchased;

(C) A taxability determination for each item purchased;

(D) A segregated tax amount for each taxed item purchased;

(E) The amount of cash or credit tendered for each purchase;

(F) The net amount returned to the customer in change;

(G) The date and time of the purchase;

(H) The name, address, and identification number of the vendor; and

(I) The receipt or invoice number of the transaction.

"Transaction report" means a report that includes without limitation:

(A) The sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of the day or shift; and

(B) Each action at an electronic cash register that is stored electronically.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-505. "Purpose" and "knowingly" are defined in Ark. Code. Ann. § 5-2-202. See AMCI 2d 3701 for other definitions.

This offense is a Class C felony.

AMCI 2d 3720
INSURANCE FRAUD BY USE OF A PROCURER

_____ (*Defendant*) is charged with the offense of insurance fraud by use of a procurer. To sustain this charge, the State must prove the following things beyond a reasonable doubt:

[First, _____ (*Defendant/Procurer*), for pecuniary benefit, procured or attempted to procure a client, patient, or customer by directly contacting the client, patient, or customer, in person, by telephone, or by electronic means, at the direction of, request of, employment of, or in cooperation with *(an attorney)(a healthcare provider) or (his) (her) employer)*;]

[First, _____ (*Defendant/provider*) was *(an attorney) (a healthcare provider) (or) (an employee of (an attorney) (a healthcare provider)*;]

Second, for the purpose of defrauding an insured person or an insurance carrier, _____ *(he) (she)* knowingly

[falsely represented the services to be provided to (an actual) (or) (prospective) client, patient, or customer]

[made a misrepresentation [as to *(his) (her)* affiliation with (an insurance company) (a law enforcement agency) (or) (a governing board of a healthcare provider)] while procuring or attempting to procure a client, patient, or customer]

[used, solicited, directed, hired, or employed another person to act as a procurer to falsely represent the services to be provided to (an actual) (or) (prospective) client, patient, or customer].

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purpose."—A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

"Procurer" means a person or entity that for pecuniary benefit procures or attempts to procure a client, patient, or customer by directly contacting the client, patient, or customer, in person, by telephone, or by electronic means, at the direction of, request of, employment of, or in cooperation with a provider.

"Procurer" does not include a provider or a person that procures or attempts to procure a client, patient, or customer for a provider through public media or a person that refers a client, patient, or customer to a provider as otherwise authorized by law.

"Provider" means: an attorney; a healthcare provider; or an employee of a provider.

"Public media" means telephone directories, professional directories, newspa-

pers and other periodicals, radio and television, billboards, and mailed or electronically transmitted written or visual communications that do not involve in-person or direct contact with a specific prospective client, patient, or customer.

NOTE ON USE

Use the appropriate bracketed option for the first element depending on whether defendant is a procurer or provider.

COMMENT

Ark. Code Ann. § 5-37-505.

Insurance fraud by use of a procurer or provider is a Class D felony.

AMCI 2d 3720-A
PROHIBITED ACTIVITY BY A PROCURER OR PROVIDER

_____ (*Defendant*) is charged with the offense of prohibited activity by a [procurer] [provider]. To sustain this charge, the State must prove the following things beyond a reasonable doubt:

[First, _____ (*Defendant/procurer*), for pecuniary benefit, procured or attempted to procure a client, patient, or customer by directly contacting the client, patient, or customer, in person, by telephone, or by electronic means, at the direction of, request of, employment of, or in cooperation with *(an attorney) (a healthcare provider) or (his) (her) employer)*; and

Second, _____ *(he) (she)* knowingly

(offered or gave anything of value to a person in order to cause the person to seek medical care from a specific healthcare provider)

(solicited a person currently under the care of a chiropractic physician to seek care from another chiropractic physician).]

[First, _____ *(Defendant/provider)* was *(an attorney) (a healthcare provider) (or) (an employee of (an attorney) (a healthcare provider)*; and

Second, _____ *(he) (she)* knowingly

permitted a procurer that he or she used, directed, or employed to

(offer or give anything of value to a person in order to cause the person to seek medical care from a specific healthcare provider)

(solicit a person currently under the care of a chiropractic physician to seek care from another chiropractic physician).]

Definitions

See AMCI 2d 3720.

NOTE ON USE

Use the appropriate option depending on whether defendant is a procurer or provider.

COMMENT

Ark. Code Ann. § 5-37-506.

Prohibited activity by a procurer or provider is a Class D felony.

AMCI 2d 3721
UNLAWFUL POSSESSION OF A SKIMMER

_____ *(Defendant)* is charged with the offense of unlawful possession of a skimmer. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant(s))* knowingly possessed a skimmer; and

Second: That [he] [she] did so with the purpose to commit _____ *(insert applicable offense under Ark. Code Ann. §§ 5-37-200 et seq.)*

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purpose" means a person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner financial sight order or payment card information.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-37-218. "Knowingly" and "purpose" are defined in Ark. Code Ann. § 5-2-202. "Skimmer" is defined in § 5-37-218.

Unlawful possession of a skimmer is a Class C felony.

Chapter 38

ARSON AND RELATED OFFENSES

3801.	Definitions For Chapter 38
3802.	Arson
3802-EXP.	Arson — Stage One Verdict Explanation — Multiple Possible Verdicts
3802-VF.	Arson — Stage One Verdict Form — Multiple Possible Verdicts
3803.	Reckless Burning
3804.	Failure To Control Or Report A Dangerous Fire
3805.	Causing A Catastrophe
3805.1.	Threatening To Cause A Catastrophe
3806.	Criminal Mischief In The First Degree
3806-EXP.	Criminal Mischief In The First Degree — Stage One Verdict Explanation — Mutiple Possible Verdicts
3806-VF.	Criminal Mischief In The First Degree — Stage One Verdict Form — Mutiple Possible Verdicts
3807.	Criminal Mischief In The Second Degree
3807-EXP.	Criminal Mischief In The Second Degree — Stage One Verdict Explanation — Mutiple Possible Verdicts
3807-VF.	Criminal Mischief In The Second Degree — Stage One Verdict Form — Mutiple Possible Verdicts

AMCI 2d 3801

DEFINITIONS FOR CHAPTER 38

As used in this Chapter, these terms have the following meanings:

(1) "Dedicated church property" means property used as a place of worship exempt from taxes pursuant to Ark. Code Ann. § 26-3-301.

(2) "Occupiable structure" means a vehicle, building or other structure [where any person lives or carries on a business or other calling] [where people assemble for purposes of business, government, education, religion, entertainment, or public transportation] [which is customarily used for overnight accommodation of persons, whether or not a person is actually present]. [Each unit of an occupiable structure divided into separately occupied units is itself an occupiable structure.]

(3) "Property" means real property or tangible or intangible personal property, including money or any paper or document that represents or embodies anything of value.

(4) "Property of another person" means any property in which any person or government other than the person in question has a possessory or proprietary interest.

(5) "Public building" means a building or occupiable structure that is either owned or leased by the state or any of its political subdivisions.

(6) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

(7) "Vital public facility" means a facility maintained for use for public communications; transportation, supply of water, gas, or power; law enforcement; fire protection; civil or national defense; or other public service.

COMMENT

Ark. Code Ann. § 5-38-101.

AMCI 2d 3802
ARSON

_____ *(Defendant(s))* [is] [are] **charged with the offense of arson. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

[First: That _____ *(defendant(s))* (started a fire) (or) (caused an explosion);

And Second: That (he/she/they) did so with the purpose of destroying or otherwise damaging:

([an occupiable structure] [a motor vehicle] that was the property of another person.)

(any property with the purpose of collecting any insurance for that property.)

(any property if _____ *(defendant(s))* thereby negligently created a risk of death or serious physical injury to (_____) (*insert name of person*) (or) (any person)).

(a vital public facility.)

(any dedicated church property.)

(a public building.)]

[or]

[First: That _____ *(defendant(s))* (started a fire) (or) (caused an explosion);

Second: That (he/she/they) did so with the purpose of destroying or otherwise damaging an area of real property that was being used for the commercial growth of (timber) (or) (an agricultural product) and the (timber) (agricultural product) was destroyed or made commercially nonviable); and

Third: The (timber) (agricultural product) that was destroyed or made commercially nonviable had a value of more than $5,000.00.]

[or]

[First: That _____ *(defendant(s))* committed _____ (*associated felony*); and

Second: That (in the course of and in furtherance of that crime) (or) (in immediate flight therefrom), _____ *(defendant(s))* recklessly caused a fire or explosion which resulted in destroying or otherwise damaging:

([an occupiable structure] [a motor vehicle].)

(any property if _____ (defendant(s)) thereby created a risk of death or serious physical injury to (_____) (*insert name of person*) (or) (any person)).

(a vital public facility.)

(any dedicated church property.)

(a public building.)]

Definitions

"Motor Vehicle."—means any self-propelled device in, upon, or by which any person or property is, or may be, transported or drawn upon a street or highway.

"Negligently." A person acts negligently with respect to attendant circumstances or a result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the defendant's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the defendant's situation.

"Purpose."—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Recklessly." A person acts recklessly with respect to the results of his conduct when he consciously disregards a substantial and unjustifiable risk that the results will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the defendant's situation.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury. "Occupiable structure," "property," "property of another person," "serious physical injury," and "vital public facility" are defined in AMCI 2d 3801.

If the optional format involving arson committed in furtherance of a felony is applicable, then the court and counsel should review AMCI 2d 1002-A and determine whether that instruction should be modified in order to prove the commission of the associated felony.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3802-VF, AMCI 2d 3802 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilty is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3802-VF, AMCI 2d 3802 should be used in conjunction with 3802-EXP and 3802-VF in Stage One and, if a verdict of guilty is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-38-301. "Negligently," "purpose," and "recklessly" are defined in Ark. Code Ann. § 5-2-202.

Arson is a Class Y, Class A, Class B, Class C, or Class D felony, or a Class A misdemeanor.

Instructions that do not conform to the model instructions should be given only when the trial judge finds the model instructions do not accurately state the law or do not contain a necessary instruction on the subject. The proffered instruction did not meet this test. The arson instruction that was given to the jury in appellant's case required the jury to find beyond a reasonable doubt that appellant started a fire with the purpose of destroying or damaging the structure. Under the instruction, the jury necessarily had to exclude natural or accidental causes for the fire, which was consistent with appellant's proffered instructions. *Fronterhouse v. State*, 2015 Ark. App. 211, 463 S.W.3d 312.

(Text continued on page 38-7)

AMCI 2d 3802-EXP

ARSON — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* **guilty of arson** [or _____ *(lesser included offense)*], **you will so indicate on the verdict form provided you. You will also make** [a] **finding**[s] **about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3802 and 3802-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in 3802-VF. In other cases, use AMCI 2d 3802 in conjunction with AMCI 2d 8101 and 8301-VF.

Where a lesser included offense instruction has been given, the bracketed reference to the lesser included offense should be given.

AMCI 2d 3802-VF

ARSON — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant(s))* is guilty of arson.

_____

FOREMAN

We, the Jury, find beyond a reasonable doubt that _____ *(defendant(s))* is guilty of _____*(lesser included offense).*

_____

FOREMAN

We, the Jury, find _____ *(defendant(s))* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall also make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that:

(1) The property sustained at least $100,000 in damage.

_____

FOREMAN

(2) The property sustained at least $15,000 but less than $100,000 in damage.

_____

FOREMAN

(3) The property sustained at least $5,000 but less than $15,000 in damage.

_____

FOREMAN

(4) The property sustained at least $2,500 but less than $5,000 in damage.

_____

FOREMAN

(5) The property sustained at least $500 but less than $2,500 in damage.

_____

FOREMAN

(6) The property sustained less than $500 in damage.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 3802-EXP.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 3803

RECKLESS BURNING

_____ *(Defendant(s))* [is] [are] **charged with the offense of reckless burning. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* **purposely** [started a fire] [or] [caused an explosion]; **and**

Second: That [he] [they] **thereby recklessly** [created a substantial risk of death or serious physical injury to (_____ *(any person)*) (any person)] [destroyed or caused substantial damage to an occupiable structure of another person] [or] [destroyed or caused substantial damage to a vital public facility.]

Definitions

"Purposely."— A person acts purposely with respect to the results of his conduct when it is his conscious object to cause the results.

"Recklessly."— A person acts recklessly with respect to the results of his conduct when he consciously disregards a substantial and unjustifiable risk that the results will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the defendant's situation.

NOTE ON USE

The definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury. "Occupiable structure," "property," "property of another person," "serious physical injury," and "vital public facility" are defined in AMCI 2d 3801.

COMMENT

Ark. Code Ann. § 5-38-302. "Purposely" and "recklessly" are defined in Ark. Code Ann. § 5-2-202.

Reckless burning is a Class D felony.

AMCI 2d 3804

FAILURE TO CONTROL OR REPORT A DANGEROUS FIRE

_____ *(Defendants(s))* [is] [are] **charged with the offense of failure to control or report a dangerous fire. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* **knew that a fire was unattended and was endangering** [the life] [or] [the physical safety] [or] [a substantial amount of property] **of another person;**

Second: That _____ *(defendant(s))* **failed to act in a reasonable manner to put out or control the fire when** [he] [they] **could have done so without substantial risk to** [himself] [themselves]; **and**

Third: That _____ *(defendant(s))* **failed to act in a reasonable manner to report the fire.**

NOTE ON USE

As pointed out in the Commentary to Ark. Code Ann. § 5-38-303, this offense may be submitted as a lesser included offense in the trial of a person whose conduct strongly suggests guilt of arson.

This instruction permits a finding of guilt only if the defendant was at fault *both* in failing to put out or control the fire and in failing to report it. The majority of the Committee so construes the statute, but points out the possibility that the courts may hold either omission to be sufficient.

COMMENT

Ark. Code Ann. § 5-38-303.

"Property" and "property of another person" are defined in AMCI 2d 3801, but there will seldom be any occasion to use either definition in connection with this instruction.

Failure to control or report a dangerous fire is a Class B misdemeanor.

AMCI 2d 3805

CAUSING A CATASTROPHE

_____ *(Defendant)* is charged with the offense of causing a catastrophe. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* **knowingly caused [(serious physical injury) (or) (death) to 5 or more persons] [or] [substantial damage to 5 or more occupiable structures] [or] [property loss in excess of $500,000]; and**

Second: That _____ *(defendant)* did so by [explosion] [or] [fire] [or] [flood] [or] [avalanche] [or] [collapse of building] [or] [distribution of (poison) (or) (radioactive material) (or) (bacteria) (or) (virus) (or) (other dangerous and difficult-to-confine force or substance).]

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury. "Serious physical injury" and "occupiable structure" are defined in AMCI 2d 3801.

COMMENT

Ark. Code Ann. § 5-38-202. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. Causing a catastrophe is a Class Y felony.

AMCI 2d 3805.1

THREATENING TO CAUSE A CATASTROPHE

_____ *(Defendant)* is charged with the offense of threatening to cause a catastrophe. To sustain this charge, the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* **contacted** [_____ *(any person)*] [a person] [or] [_____ *(a company, corporation, or governmental entity)*] **and**

Second: That _____ *(defendant)* **threatened to cause** [(serious physical injury) (or) (death) to 5 or more persons] [or] [substantial damage to 5 or more occupiable structures] [or] [property loss in excess of $500,000]; **and**

Third: That _____ *(defendant)* **threatened to do so by** [explosion] [or] [fire] [or] [flood] [or] [avalanche] [or] [collapse of building] [or] [distribution of (poison) (or) (radioactive material) (or) (bacteria) (or) (virus) (or) (other dangerous and difficult-to-confine force or substance)])]; **and**

Fourth: That _____ *(defendant)* **communicated that** (he) (she) **would carry out the threat(s) unless [(money was paid) (or) (property was given) to someone] [or]** [_____ *(the person, company, corporation, or governmental entity threatened)* **performed a requested act].**

NOTE ON USE

"Serious physical injury" and "occupiable structure" are defined in AMCI 2d 3801.

COMMENT

Ark. Code Ann. § 5-38-202.

Threatening to cause a catastrophe is a Class D felony.

AMCI 2d 3806

CRIMINAL MISCHIEF IN THE FIRST DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of criminal mischief in the first degree. To sustain this charge the State must prove beyond a reasonable doubt that** _____ *(defendant(s))* **purposely and without legal justification** [destroyed] [or] [caused damage to]:

[any property of (another person) (_____ *(another person)*)]

[or]

(his own property) (property of [_____ *(another)*] [another] for the purpose of collecting insurance therefore.

Definition

"Purposely."— A person acts purposely with respect to the results of his conduct when it is his conscious object to cause the results.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3806-VF, AMCI 2d 3806 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3806-VF, AMCI 2d 3806 should be used in conjunction with 3806-EXP and 3806-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

Where the defendant is charged with cutting and removing timber without obtaining a survey, or the purposeful misrepresentation of the ownership or origin of the timber, an appropriate presumption instruction may be given. *See, e.g.*, AMCI 2d 3602-PR.

"Serious physical injury" and "occupiable structure" are defined in AMCI 2d 3801.

COMMENT

Ark. Code. Ann. § 5-38-203. "Purposely" is defined at Ark. Code Ann. § 5-1-102(17).

Criminal mischief in the first degree may be a Class C felony or a Class A misdemeanor.

AMCI 2d 3806-EXP

CRIMINAL MISCHIEF IN THE FIRST DEGREE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of criminal mischief in the first degree, you will so indicate on the verdict form provided you. You will also make [a] **finding**[s] **about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3806 and 3806-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in 3806-VF. In other cases, use AMCI 2d 3806 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3806-VF
CRIMINAL MISCHIEF IN THE FIRST DEGREE—STAGE ONE
VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

If your verdict is guilty, you shall make ONE of the following findings:

Do you, the Jury, find beyond a reasonable doubt that the amount of actual damage was

(1) $25,000 or more?

_____
FOREMAN

(2) More than $5,000 but less than $25,000?

_____
FOREMAN

(3) More than $1,000 but not more than $5,000?

_____
FOREMAN

(4) $1,000 or less?

_____
FOREMAN

[Do you, the Jury, find beyond a reasonable doubt that the damage to the property involved the removal of (copper) (brass) (aluminum) (bronze) (lead) (zinc) (nickel) (other nonferrous metal)?]

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3806-EXP.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

A person convicted of a felony offense is subject to an enhanced sentence of an additional term of imprisonment of 5 years at the discretion of the court if the offense involved the removal of nonferrous metals as defined in Ark. Code Ann.§ 17-44-101.

AMCI 2d 3807
CRIMINAL MISCHIEF IN THE SECOND DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of criminal mischief in the second degree. To sustain this charge the State must prove beyond a reasonable doubt that _____ (defendant(s)):**

[recklessly (destroyed) (or) (damaged) any property of (another person) (_____ *(another person)*)] [or]

[purposely tampered with the property of (another person) (_____ *(another person)*) and thereby caused substantial inconvenience to (the owner) (_____ *(the owner)*) (or) (some other person) (_____ *(other person)*)].

Definitions

"Purposely."—A person acts purposely with respect to the results of his conduct when it is his conscious object to cause the results.

"Recklessly."—A person acts recklessly with respect to the results of his conduct when he consciously disregards a substantial and unjustifiable risk that the results will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the defendant's situation.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3807-VF, AMCI 2d 3807 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in stage two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 3807-VF, AMCI 2d 3807 should be used in conjunction with 3807-EXP and 3807-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-38-204. "Recklessly" and "purposely" are defined in Ark. Code Ann. § 5-2-202.

Criminal mischief in the second degree may be a Class D felony, a Class A misdemeanor, or a Class B misdemeanor.

AMCI 2d 3807-EXP
CRIMINAL MISCHIEF IN THE SECOND DEGREE—STAGE ONE
VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ (defendant(s)) guilty of criminal mischief in the second degree, you will so indicate on the verdict form provided you. You will also make [a] finding[s] about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3807 and 3807-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out at 3807-VF. In other cases, use AMCI 2d 3807 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 3807-VF
CRIMINAL MISCHIEF IN THE SECOND DEGREE—STAGE ONE
VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of criminal mischief in the second degree.

_____
FOREMAN

We, the Jury, find _____ (defendant) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall also make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that:

(1) The amount of actual damage was $5,000 or more.

_____
FOREMAN

(2) The amount of actual damage was at least $1,000 but less than $5,000.

_____
FOREMAN

(3) The amount of actual damage was less than $1,000.

_____
FOREMAN

[In addition, did the damage to the property involve the removal of (copper) (brass) (aluminum) (bronze) (lead) (zinc) (nickel) (other nonferrous metal)?]

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3807-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

A person convicted of a felony offense is subject to an enhanced sentence of an additional term of imprisonment of 5 years at the discretion of the court if the

offense involved the removal of nonferrous metals as defined in Ark. Code Ann.§ 17-44-101.

CHAPTER 39

BURGLARY AND RELATED OFFENSES

SYNOPSIS

3901. Residential Burglary

3901.1. Aggravated Residential Burglary

3902. Commercial Burglary

3903. Breaking or Entering

3904. Criminal Trespass

3904-EXP. Criminal Trespass — Stage One Verdict Explanation — Multiple Possible Verdicts

3904-VF. Criminal Trespass — Stage One Verdict Form — Multiple Possible Verdicts

AMCI 2d 3901
RESIDENTIAL BURGLARY

_____*(Defendant(s))* [is] [are] **charged with the offense of residential burglary. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)) [entered] [or] [remained unlawfully in] _____ *(describe residential occupiable structure of another person)*; **and**

Second: That [he] [they] did so with the purpose of committing therein _____*(offense(s) punishable by imprisonment).*

Definitions

"Residential occupiable structure" means a vehicle, building or other structure [where any person lives] [which is customarily used for overnight accommodation of persons, whether or not a person is actually present]. [Each unit of an occupiable structure divided into separately occupied units is itself an occupiable structure.]

"Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to do so. [A person who enters or remains in or upon premises that are, at the time, open to the public does so with license and privilege, regardless of his purpose, unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or some other person authorized by the owner.] [A license or privilege to enter or remain in or upon premises, only part of which is open to the public, is not a license or privilege to enter or remain in a part of the premises not open to the public.] [A person who enters or remains upon unimproved and apparently unused land not fenced or otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice not to enter or remain is personally communicated to him by the owner or some person authorized by the owner, or unless such notice is given by posting in a conspicuous manner.]

"Vehicle" means any craft or device designed for the transportation of people or property across land or water, or through the air.

"Purpose." — A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

The definitions should be given when requested by counsel or when the Court feels that it would be helpful to the jury. If the status of "residential occupiable structure" or its ownership becomes an issue, insert "a residential occupiable structure of another person" in the blank in the first element.

If the character of the offense in the second element is in issue it may be necessary to give an AMCI 2d instruction, appropriately modified, setting forth the elements of that offense.

COMMENT

Ark. Code Ann. § 5-39-201. "Purpose" is defined in Ark. Code Ann. § 5-2-202. The other definitions are found in § 5-39-101.

Residential burglary is a Class B felony.

AMCI 2d 3901.1
AGGRAVATED RESIDENTIAL BURGLARY

[Insert text of AMCI 2d 3901, as appropriately modified]

Third, That the _____ *(residential occupiable structure)* was occupied by a person; and

[Fourth, That _____ (defendant) was (armed with a deadly weapon or represented by word or conduct that he was armed with a deadly weapon).] [or]

[Fourth, That _____ (defendant) inflicted or attempted to inflict death or serious physical injury upon another person.]

Definitions

"Deadly weapon" means a firearm [or] [anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury] [or] [anything that in the manner of its use or intended use is capable of causing death or serious physical injury].

"Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

NOTE ON USE

Use with AMCI 2d 3901.

COMMENT

Ark. Code Ann.§ 5-39-204. Aggravated residential burglary is a Class Y felony. "Deadly weapon" and "serious physical injury" are defined in Ark. Code Ann. § 5-1-102.

AMCI 2d 3902
COMMERCIAL BURGLARY

_____*(Defendant(s))* [is] [are] **charged with the offense of commercial burglary. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** [entered] [or] [remained unlawfully in]_____ *(describe commercial occupiable structure of another person)*; **and**

Second: That [he] [they] **did so with the purpose of committing therein**_____**(offense(s) punishable by imprisonment).**

Definitions

"Commercial occupiable structure" means a vehicle, building or other structure [where any person carries on a business or other calling] [where people assemble for purposes of business, government, education, religion, entertainment, or public transportation].

"Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to do so. [A person who enters or remains in or upon premises that are, at the time, open to the public does so with license and privilege, regardless of his purpose, unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or some other person authorized by the owner.] [A license or privilege to enter or remain in or upon premises, only part of which is open to the public, is not a license or privilege to enter or remain in a part of the premises not open to the public.] [A person who enters or remains upon unimproved and apparently unused land not fenced or otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice not to enter or remain is personally communicated to him by the owner or some person authorized by the owner, or unless such notice is given by posting in a conspicuous manner.]

"Vehicle" means any craft or device designed for the transportation of people or property across land or water, or through the air.

"Purpose." — `A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

The definitions should be given when requested by counsel or when the Court feels that it would be helpful to the jury. If the status of "commercial occupiable structure" or its ownership becomes an issue, insert "a commercial occupiable structure of another person" in the blank in the first element.

If the character of the offense in the second element is in issue it may be necessary to give an AMCI 2d instruction, appropriately modified, setting forth the elements of that offense.

COMMENT

Ark. Code Ann. § 5-39-201. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

The other definitions are found in § 5-39-101.

Commercial burglary is a Class C felony.

AMCI 2d 3903
BREAKING OR ENTERING

_____*(Defendant(s))* [is] [are] **charged with the offense of breaking or entering. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** [entered] [or] [broke into] **a** [building] [structure] [vehicle] [vault] [safe] [cash register] [money vending machine] [product dispenser] [money depository] [safety deposit box] [coin telephone] [coin box] [coin-operated amusement or vending machine] [fare box on a bus] [_____]*(other similar container, apparatus, or equipment)*; **and**

Second: That [he] [they] **did so for the purpose of committing** [a theft] [or] [_____]*(felony)*.

Definition

"Purpose." — A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

As pointed out in the Commentary to Ark. Code Ann. § 5-39-202, in some instances this offense is a lesser included offense of burglary.

If the character of the offense in the second element is in issue it may be necessary to give an AMCI 2d instruction, appropriately modified, setting forth the elements of that offense.

COMMENT

Ark. Code Ann. § 5-39-202.

"Purpose" is defined in Ark. Code Ann. § 5-2-202.

Breaking or entering is a Class D felony.

The term "structure" has been held to include a fence. *Townsend v. State,* 308 Ark. 266, 824 S.W.2d 821 (1992).

AMCI 2d 3904
CRIMINAL TRESPASS

_____ *(Defendant(s))* [is] [are] **charged with the offense of criminal trespass. To sustain this charge the State must prove beyond a reasonable doubt that** _____ *(defendant(s))* **purposely** [entered] [or] [remained unlawfully] [in a vehicle of another person] [upon the premises owned or leased by another person].

Definitions

"Premises" means occupiable structures and any real property.

"Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to do so. [A person who enters or remains in or upon premises that are, at the time, open to the public does so with license and privilege, regardless of his purpose, unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or some other person authorized by the owner.] [A license or privilege to enter or remain in or upon premises, only part of which is open to the public, is not a license or privilege to enter or remain in a part of the premises not open to the public.] [A person who enters or remains upon unimproved and apparently unused land not fenced or otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice not to enter or remain is personally communicated to him by the owner or some person authorized by the owner, or unless such notice is given by posting in a conspicuous manner.]

"Purposely."—A person acts purposely with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

This instruction should be given in conjunction with AMCI 2d 3904-EXP and 3904-VF if the evidence affords the jury the option of selecting a verdict from the alternatives provided therein.

Use AMCI 2d 9210 and 9322-VF for enhancement based upon prior acts of criminal trespass.

COMMENT

Ark. Code Ann. § 5-39-203.

"Premises" and "enter or remain unlawfully" are defined in § 5-39-101. "Residential occupiable structure," "commercial occupiable structure" and "vehicle" are also defined in § 5-39-101, and are set forth in AMCI 2d 3901 and 3902, but there will seldom be any occasion to use those definitions in connection with this instruction.

"Purposely" is defined in Ark. Code Ann. § 5-2-202.

Criminal trespass may be a Class A, B, or C misdemeanor or a Class D felony (two or more convictions for a Class A misdemeanor of the offense or violation of Ark. Code Ann. § 5-39-305).

Circuit court did not abuse its discretion in denying defendant's request to instruct the jury on criminal trespass because there was no rational basis for a verdict acquitting appellant of residential burglary and convicting him of criminal trespass. *Ross v. State*, 2011 Ark. App. 176, 381 S.W.3d 884.

AMCI 2d 3904-EXP
CRIMINAL TRESPASS—STAGE ONE VERDICT
EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of criminal trespass, you will so indicate on the verdict form provided you. You will also make [a] finding[s] about the circumstances of the offense as requested on the form.

[You are instructed that the term "occupiable structure" means a vehicle, building, or other structure:

(where any person lives or carries on a business or other calling) (or)

(where people assemble for purposes of business, government, education, religion, entertainment, or public transportation) (or)

(which is customarily used for overnight accommodation of persons, whether or not a person is actually present).]

[You are instructed that the term "fence" means a structure that is a boundary or barrier that limits human, livestock, or vehicle ingress or egress in an area.]

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 3904 and 3904-VF where the evidence affords the jury a rational basis for selecting one verdict from several possibilities. In other cases, use AMCI 2d 3904 in conjunction with AMCI 2d 8101 and 8301-VF.

If criminal trespass is being submitted as a lesser included offense, this instruction may be appropriately modified so that it may be combined with AMCI 2d 8101. *See* AMCI 2d 9502 (Illustrative Instructions: Burglary), para. 13.

Since this instruction will be most often used as part of a lesser offense instruction, "residential occupiable structure" or "commercial occupiable structure" may have been previously defined, and the trial court may choose not to use the definition again.

COMMENT

The definition of fence is found in Ark. Code Ann. § 2-39-102.

AMCI 2d 3904-VF
CRIMINAL TRESPASS—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* **is guilty of criminal trespass.**

_____

FOREMAN

We, the Jury, find _____ *(defendant)* **not guilty.**

_____

FOREMAN]

If your verdict is guilty [of criminal trespass], **you shall complete the following:**

Do you, the Jury, find beyond a reasonable doubt that the [vehicle] [or] [premises] was an occupiable structure?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that the trespass involved the removal of a posted sign, fence, or portion of a fence?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that at the time of the criminal trespass the _____ *(Defendant)* was in possession of _____ *(insert applicable item from section 5-39-203)*?

YES _____

NO _____

_____

FOREMAN]

Definitions

"Artifact" means an object produced or shaped by human craft, such as a tool,

weapon, coin, or ornament of archaeological, cultural, or historical interest or significance.

"Harvesting device" means a device or object used to collect or accumulate or to assist in the collection or accumulation of an agricultural resource or a natural resource in bulk.

"Killing device" means a firearm, bladed weapon, or other object, when not used in the course of lawful hunting or fishing of wildlife.

"Natural resource" means materials or substances such as minerals, timber, water, plants, and fertile land that occur in nature and can be used for economic gain.

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 3904-EXP.

The bracketed "criminal trespass" language in paragraph three should be used when this verdict form is submitted as a lesser included offense alternative. If criminal trespass is being submitted as a lesser included offense, this instruction may be appropriately modified so that it may be combined with AMCI 8301. *See* AMCI 2d 9502 (Illustrative Instructions: Burglary), para. 15.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

If an affirmative defense is asserted, modify AMCI 2d 601. If one of the defenses listed in the statute is asserted, modify an instruction such as AMCI 2d 7305-D.

CHAPTER 40

OBTAINING PROPERTY WITH CHECK DRAWN ON INSUFFICIENT FUNDS (HOT CHECK LAW OFFENSES)

SYNOPSIS

4000. Introductory Note on Use

4001. Obtaining Property or Services with Check Drawn on Insufficient Funds or on Non-Existent Account

4001.1. Fraudulent Withdrawal of Funds

4001-EXP. Obtaining Property or Services with Check Drawn on Insufficient Funds or on Non-Existent Account—Stage One Verdict Explanation—Multiple Possible Verdicts

4001-VF. Obtaining Property or Services with Check Drawn on Insufficient Funds or on Non-Existent Account—Stage One Verdict Form—Multiple Possible Verdicts

4001-EXP-HAB. Stage Two—Enhanced Punishment—Obtaining Property or Services with Check Drawn on Insufficient Funds

4001-HAB-VF. Stage Two Verdict Forms—Obtaining Property or Services with Check Drawn on Insufficient Funds

4001-EXP-M. Stage Two—Standard Punishment Instruction—Misdemeanor Hot Check

4001-VF-M. Stage Two—Verdict Form $1,000 or Less

AMCI 2d 4000
INTRODUCTORY NOTE ON USE

This chapter contains instructions and verdict forms to be used in prosecutions for bad check offenses. Statutory authority defining the offense and providing punishment ranges—Ark. Code Ann. §§ 5-37-301 through -307—is of sufficient complexity to justify special treatment. Accordingly, in addition to the instructions defining the offense and explanatory instructions, this chapter provides Stage One and Stage Two explanatory instructions and verdict forms.

The instruction format is required by the complex grading scheme found at § 5-37-302(b), which creates felony and misdemeanor liability according to the amount of the check or checks at issue. It also allows aggregation of the amounts of different checks charged in multiple informations or in an information containing multiple counts. Finally, it permits enhancement of punishment in the case of a previously convicted misdemeanant subsequently convicted of another "hot check" offense.

AMCI 2d 4001
OBTAINING PROPERTY OR SERVICES WITH CHECK DRAWN ON INSUFFICIENT FUNDS OR ON NON-EXISTENT ACCOUNT

_____ *(Defendant)* **is charged with violating the Arkansas Hot Check Law.** [Each check is the subject of a separate charge.] **To sustain** [this] [these] **charge[s], the State must prove the following things beyond a reasonable doubt** [for each charge]:

First: That _____ **(defendant)** [obtained any article or thing of value] [secured possession of any personal property to which a lien had attached] [paid wages or a salary for personal services] [paid rent] [paid (a fine) (or) (court costs)] [paid any licenses, taxes, or fees] [paid child support] [or] [_____] *(accomplished any other purpose)* **by** [making] [or][drawing] [or] [uttering] [or] [delivering] _____*(describe check)* **for payment of money upon** _____ **(bank or institution)**;

Second: That [as to any particular check] _____ *(defendant)* **knew at the time he** [made] [or] [drew] [or] [uttered] [or] [delivered] **the check that there were not sufficient funds on deposit with the bank for payment in full of the check** [and all other outstanding checks against such funds]**; and**

Third: That _____ **(defendant)** [made] [or] [drew] [or] [uttered] [or] [delivered] **the** [particular] **check with intent to defraud.**

[If you find that _____ *(defendant)* (made) (or) (drew) (or) (delivered) (or) (uttered) (the) (a particular) check, and that:

(1) _____ *(defendant)* had no account with the bank when the check was (made) (or) (drawn) (or) (delivered) (or) (uttered); (or)

(2) the (check) (draft) (order) bears the endorsement or stamp of a collecting bank indicating that the instrument was returned because of insufficient funds to cover the value; or

(3) the bank refused payment when presented with the check within thirty (30) days after delivery by (the holder) (_____) *(the holder)*, and _____ *(defendant)* did not pay (the holder) (_____) *(the holder)* the amount due plus a service charge of _____ *(up to $20.00)* within ten (10) days after receiving written notice that payment was refused;

then you may consider that fact along with all of the other evidence in the case in determining whether _____*(defendant)* (intended) (or) (knew) (or) (expected) that the check would not be honored and that _____ *(defendant)* intended to defraud _____*(the holder)*].

NOTE ON USE

If there are separate charges based on separate checks, repeat paragraph First for each check before proceeding to paragraph Second. If the charge involves an instrument other than a check or an institution other than a bank, the instruction should be appropriately modified.

The statute defining the offense, Ark. Code Ann. § 5-37-302(a), does not mention non-existent accounts, while the penalty section, Ark. Code Ann. § 5-37-302(b), does. If the charge involves an allegation of a non-existent account, the instructions should be appropriately modified.

The bracketed permissible inference portion of this instruction, which was adapted from Ark. Code Ann. § 5-37-304(a), should be used when appropriate.

In misdemeanor prosecutions not involving a habitual offender charge, use this instruction in conjunction with AMCI 2d 8101 and 8301-VF, in Stage One and with AMCI 2d 4001-EXP-M and 4001-VF-M in Stage Two.

In misdemeanor prosecutions involving a special hot check habitual offender charge, use this instruction in conjunction with AMCI 2d 8101 and 8301-VF, in Stage One and with AMCI 2d 4001-EXP-HAB and 4001-HAB-VF in Stage Two.

In felony prosecutions where the evidence affords the jury a rational basis for selecting one verdict from several possibilities, use this instruction in conjunction with AMCI 2d 4001-EXP and 4001-VF in Stage One and, in Stage Two, with the standard punishment instructions and verdict forms found in AMCI 2d 9101 *et seq.*, and 9301 *et seq.*, respectively. Where the jury does not have a basis for selecting one verdict from several possibilities, use AMCI 2d 4001 in conjunction with AMCI 2d 8101 and 8301-VF and the standard Stage Two forms.

In habitual offender cases brought under Ark. Code Ann. § 5-4-501 *et seq.*, use appropriate Stage One instructions with AMCI 2d 9201 and 9311-VF.

COMMENT

Ark. Code. Ann. §§ 5-37-302 to -304. Act 1466 of 2001 expanded "The Arkansas Hot Check Law" to cover any other form of presentment involving the transmission of account information.

This offense may be a Class B felony, a Class C felony, or an unclassified misdemeanor.

AMCI 2d 4001.1
FRAUDULENT WITHDRAWAL OF FUNDS

_____ *(Defendant)* **is charge with the offense of fraudulent withdrawal of funds. To sustain this charge, the State must prove the following things beyond a reasonable doubt:**

First: That after [making] [or] [drawing] [or] [uttering] [or][delivering] **the check,** _____ **(defendant)** [withdrew] [caused to be withdrawn] **any funds deposited in the bank before the check was presented to the bank, leaving insufficient funds in the bank for payment in full of the check** [and all other outstanding checks against the funds]**; and**

Second: That _____ **(defendant)** [withdrew the funds] [caused the funds to be withdrawn] **with intent to defraud.**

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 8101 and 8301-VF, and, in appropriate cases and with necessary modifications, with AMCI 2d 4001-EXP-HAB and 4001-HAB-VF.

COMMENT

Ark. Code Ann. § 5-37-302(a).

This offense may be a Class B felony, a Class C felony, or an unclassified misdemeanor.

AMCI 2d 4001-EXP
OBTAINING PROPERTY OR SERVICES WITH CHECK DRAWN ON INSUFFICIENT FUNDS OR ON NON-EXISTENT ACCOUNT—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ (defendant(s)) guilty of violating the Arkansas Hot Check Law, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 4001, 4001.1, and 4001-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out at 4001-VF. In other cases, use AMCI 2d 4001 and 4001.1 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 4001-VF
OBTAINING PROPERTY OR SERVICES WITH CHECK DRAWN ON INSUFFICIENT FUNDS OR ON NON-EXISTENT ACCOUNT—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant) is guilty of violating the Arkansas Hot Check Law.

_____

FOREMAN

We, the Jury, find _____ (defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall also make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that:

(1) More than one check was drawn within a 90-day period, and each check was for less than $25,000, and the total amount of the checks was $25,000 or more.

_____

FOREMAN

(2) The check was for $25,000 or more.

_____

FOREMAN

(3) More than one check was drawn within a 90-day period, and each check was for $5,000 or less, and the total amount of the checks was more than $5,000.

_____

FOREMAN

(4) The check was for more than $5,000 but less than $25,000.

_____

FOREMAN

(5) The check was for more than $1,000 but not more than $5,000.

_____

FOREMAN

(6) More than one check was drawn within a 90-day period, and each check was for $1,000 or less, and the total amount of the checks was more than $1,000.

_____

FOREMAN

(7) The check was for $1,000 or less.

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 4001-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 4001-EXP-HAB
STAGE TWO—ENHANCED PUNISHMENT—OBTAINING PROPERTY WITH CHECK DRAWN ON INSUFFICIENT FUNDS

You have found _____ (defendant) guilty of violating the Arkansas Hot Check Law. The State has also alleged that _____ (defendant) is subject to greater punishment because of previous convictions of this offense. The State has the burden of proving the other conviction [s] **beyond a reasonable doubt.**

[If you find _____ *(defendant)* has previously been convicted two or more times of violating the Arkansas Hot Check Law, you may sentence him to a term of imprisonment in the county jail not to exceed one year, or to pay a fine of not less than $200 nor more than $2,000, or to both imprisonment and a fine.]

[If you find _____ *(defendant)* has previously been convicted one time of violating the Arkansas Hot Check Law, you may sentence him to a term of imprisonment in the county jail not to exceed 90 days, or to pay a fine of not less than $100 nor more than $1,000, or to both imprisonment and a fine.]

If you have a reasonable doubt that _____ (defendant) has previously been convicted of violating the Arkansas Hot Check Law, you may sentence him to a term of imprisonment in the county jail not to exceed 30 days, or to pay a fine of not less than $50 nor more than $500, or to both imprisonment and a fine.

NOTE ON USE

Use this instruction in conjunction with AMCI 2d 4001, 4001.1, 8101, and 8301-VF in circumstances where the defendant is charged as a repeat offender with obtaining property with checks of $1,000 or less.

If the defendant is charged with having two or more previous bad check convictions, then all four paragraphs should be given. If he is charged with having only one other bad check conviction, then only paragraphs 1, 3, and 4 need be given. In any event, the substance of the last paragraph should always be given.

COMMENT

Ark. Code Ann. § 5-37-302.

AMCI 2d 4001-HAB-VF
STAGE TWO VERDICT FORMS—OBTAINING PROPERTY WITH CHECK DRAWN ON INSUFFICIENT FUNDS

I

We, the Jury, having found that _____ (defendant) has previously been convicted two or more times of violating the Arkansas Hot Check Law, fix his punishment as follows:

(1) Imprisonment in the county jail for _____ (not more than 1 year); or

(2) A fine of _____ (between $200 and $2,000); or

(3) Imprisonment in the county jail for _____ (not more than 1 year) and a fine of _____ (between $200 and $2,000).

_____
FOREMAN

II

We, the Jury, having found that _____ (defendant) has previously been convicted one time of violating the Arkansas Hot Check Law, fix his punishment as follows:

(1) Imprisonment in the county jail for _____ (not more than 90) days: or

(2) A fine of _____ (between $100 and $1,000); or

(3) Both imprisonment in the county jail for _____ (not more than 90) days and a fine of _____ (between $100 and $1,000).

_____
FOREMAN

III

We, the Jury, having found that _____ (defendant) has not previously been convicted of violating the Arkansas Hot Check Law, fix his punishment as follows:

(1) Imprisonment in the county jail for _____ (not more than 30) days; or

(2) A fine of _____ (between $50 and $500); or

(3) Imprisonment in the county jail for _____ (not more than 30) days and a fine of _____ (between $50 and $500).

FOREMAN

NOTE ON USE

Use this instruction in conjunction with AMCI 2d 4001, 4001.1, and 4001-EXP-HAB. Forms I, II, and III should be submitted separately, and the bracketed language in the first sentence of AMCI 2d 9111 should be given.

AMCI 2d 4001-EXP-M
STAGE TWO—STANDARD PUNISHMENT
INSTRUCTION—MISDEMEANOR HOT CHECK

You have found _____ (defendant) guilty of violating the Arkansas Hot Check Law. Violating the Hot Check Law is punishable by imprisonment in the county jail for not more than 30 days, or by a fine of not less than $50 nor more than $500, or by both fine and imprisonment.

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of obtaining property with a check or checks for $1,000 or less drawn on insufficient funds.

If the defendant is charged as a habitual offender, AMCI 2d 4001-EXP-HAB and 4001-HAB-VF should be used.

AMCI 2d 4001-VF-M
STAGE TWO—VERDICT FORM $1,000 OR LESS

We, the Jury, having found _____ (defendant) guilty of violating the Arkansas Hot Check law with [a] **check** [s] **having a face value of $1,000 or less, fix his punishment as follows:**

(1) Imprisonment in the county jail for _____ *(not more than 30)* days; or

(2) A fine of _____ *(between $50 and $500)*; or

(3) Imprisonment in the county jail for _____ *(not more than 30)* days and a fine of _____ *(between $50 and $500).*

_____

FOREMAN

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 4001-EXP-M.

CHAPTER 41

COMPUTER CRIMES

SYNOPSIS

4101. Unlawful Act Regarding Computer

4101-EXP. Unlawful Act Regarding Computer — Stage One Verdict Explanation — Multiple Possible Verdicts

4101-VF. Unlawful Act Regarding Computer — Stage One Verdict Form — Multiple Possible Verdicts

4102. Unlawful Interference With Access to Computers

4102.1. Unlawful Use or Access to Computers

4102-EXP. Unlawful Interference With Access to Computers — Unlawful Use or Access to Computers — Stage One Verdict Explanation — Multiple Possible Verdicts

4102-VF. Unlawful Interference With Access to Computers — Unlawful Use or Access to Computers — Stage One Verdict Form — Multiple Possible Verdicts

4102-AD. Unlawful Interference With Access to Computers — Unlawful Use or Access to Computers — Affirmative Defense

4103. Unlawful Use of Encryption

4104. Unlawful Act Involving Electronic Mail

4105. Computer Password Disclosure

4105-EXP. Computer Password Disclosure — Stage One Verdict Explanation — Multiple Possible Verdicts

4105-VF. Computer Password Disclosure — Stage One Verdict Form — Multiple Possible Verdicts

AMCI 2d 4101
UNLAWFUL ACT REGARDING COMPUTER

_____*(Defendant)* is charged with the offense of committing an unlawful act regarding a computer. To sustain this charge the State must prove the following beyond a reasonable doubt:

That _____*(defendant)*knowingly and without authorization (modified) (damaged) (destroyed) (disclosed) (used) (transferred) (concealed) (took) (retained possession of) (copied) (obtained access to) (attempted to obtain access to) (permitted access to) (caused to be accessed) (or) (entered) (data) (or) (a program) which exists (inside) (outside) a (computer) (system) (or) (network).

OR

That _____*(defendant)* knowingly and without authorization (modified) (destroyed) (used) (took) (damaged) (transferred) (concealed) (copied) (retained possession of) (obtained access to) (attempted to obtain access to) (permitted access to) (caused to be accessed) (equipment) (or) (supplies) that are (used) (or) (intended to be used) in a (computer) (system) (or) (network).

OR

That _____ *(defendant)*knowingly and without authorization (destroyed) (damaged) (took) (altered) (transferred) (disclosed) (concealed) (copied) (used) (retained possession of) (obtained access to) (attempted to obtain access to) (permitted access to) (caused to be accessed) a (computer) (system) (or) (network).

OR

That _____ *(defendant)* knowingly and without authorization obtained and (disclosed) (published) (transferred) (or) (used) a device used to access a (computer) (network) (or) (data).

OR

That _____ *(defendant)*knowingly and without authorization (introduced) (caused to be introduced) (or attempted to introduce) a computer contaminant into a (computer) (system) (or) (network).

Definitions

"Access" means to intercept, instruct, communicate with, store data in, retrieve from or otherwise make use of any resources of a computer, network, or data.

"Computer" means an electronic, magnetic, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with the device. "Computer" also includes any on-line service, internet service, or local bulletin board, any electronic storage device, including a floppy disk or other magnetic storage device, or any compact disk that has

read-only memory and the capacity to store audio, video, or written materials.

"Computer contaminant" means any data, information, image, program, signal, or sound that is designed or has the capability to contaminate, corrupt, consume, damage, destroy, disrupt, modify, record, or transmit; or cause to be contaminated, corrupted, consumed, damaged, destroyed, disrupted, modified, recorded, or transmitted, any other data, information, image, program, signal, or sound contained in a computer, system or network without the knowledge or consent of the person who owns the other data, information, image, program , signal or sound, or the computer, system or network. "Computer contaminant" includes but is not limited to a virus, worm, or Trojan horse; or any other similar data, information, image, program, signal or sound that is designed or has the capability to prevent, impede, delay or disrupt the normal operation or use of any component, device, equipment, system, or network.

"Data" means a representation of any form of information, knowledge, facts, concepts, or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed, or has been processed in a system or network.

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Network" means a set of related, remotely connected devices and facilities, including more than one system, with the capability to transmit data among any of the devices and facilities. "Network" includes, but is not limited to, a local, regional, or global computer network.

"Program" means an ordered set of data representing coded instructions, or statements which can be executed by a computer and cause the computer to perform one or more tasks.

"System" means a set of related equipment, whether or not connected, which is used with or for a computer.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels they would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 4101-VF, AMCI 2d 4101 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilty is returned, then in Stage Two a punishment instruction from Chapter 91 and averdict form from Chapter 93, both geared to the grade of the offense charged in the information, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 4101-VF, AMCI 2d 4101 should be used in

conjunction with AMCI 2d 4101-EXP and 4101-VF in Stage One. If a verdict of guilty is returned, the appropriate Stage Two punishment instruction and verdict form should be used.

COMMENT

Ark. Code Ann. § 5-41-202. Most of the definitions are found in Ark. Code Ann. § 5-41-201. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Committing an unlawful act regarding a computer is a Class C felony if the act was committed to defraud or illegally obtain property or if the act resulted in more than $500 in damages. Otherwise, it is a Class A misdemeanor.

AMCI 2d 4101-EXP
UNLAWFUL ACT REGARDING COMPUTER — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant)* guilty of committing an unlawful act regarding a computer, you will so indicate on the verdict form provided to you. You will also make (a) finding(s) about the circumstances of the offense as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 4101 and 4101-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 4101-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 4101-VF
UNLAWFUL ACT REGARDING COMPUTER — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of committing an unlawful act regarding a computer.

_____
FOREMAN

We, the Jury, find _____*(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the act was committed to (devise) (or) (execute) a scheme (to defraud) (or) (illegally obtain property)?;

YES _____

NO _____

_____
FOREMAN

Do you, the Jury, find beyond a reasonable doubt that the act caused damage in excess of $500?

YES_____

NO _____

_____
FOREMAN

Do you, the Jury, find beyond a reasonable doubt that the act caused an interruption or impairment of a public service including [a government operation] [a system of (public communication) (or) (transportation)] [as upply of (water) (gas) (electricity)]?

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 4101-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 4102
UNLAWFUL INTERFERENCE WITH ACCESS TO COMPUTERS

_____ *(Defendant)* is charged with the offense of committing unlawful interference with access to computers. To sustain this charge the State must prove beyond a reasonable doubt that_____ *(Defendant)* knowingly and without authorization (interfered with) (denied) (or) (caused the denial of) access to or use of a (computer) (system) (or) (network) to a person who has the duty and right to use it.

Definitions

"Access" means to intercept, instruct, communicate with, store data in, retrieve from or otherwise make use of any resources of a computer, network, or data.

"Computer" means an electronic, magnetic, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with the device. "Computer" also includes any on-line service, internet service, or local bulletin board, any electronic storage device, including a floppy disk or other magnetic storage device, or any compact disk that has read-only memory and the capacity to store audio, video, or written materials.

"Data" means a representation of any form of information, knowledge, facts, concepts, or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed, or has been processed in a system or network.

"Information service" means a service that is designed or has the capability to generate, process, store, retrieve, convey, emit, transmit, receive, relay, record, or reproduce any data, information, image, program, signal, or sound by means of any component, device, equipment, system, or network, including, but not limited to, by means of:

(A) A computer, computer system, computer network, modem, or scanner;

(B) A telephone, cellular phone, satellite phone, pager, personal communications device, or facsimile machine;

(C) Any type of transmitter or receiver; or

(D) Any other component, device, equipment, system, or network that uses analog, digital, electronic, electromagnetic, magnetic, or optical technology.

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when she is aware that it is practically certain that his conduct will cause such a result.

"Network" means a set of related, remotely connected devices and facilities, including more than one system, with the capability to transmit data among any of the

devices and facilities. "Network" includes, but is not limited to, a local, regional, or global computer network.

"Program" means an ordered set of data representing coded instructions, or statements which can be executed by a computer and cause the computer to perform one or more tasks.

"System" means a set of related equipment, whether or not connected, which is used with or for a computer.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels they would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 4102-VF, AMCI 2d 4102 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilty is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 4102-VF, AMCI 2d 4102 should be used in conjunction with AMCI 2d 4102-EXP and 4102-VF in Stage One. If a verdict of guilty is returned, the appropriate Stage Two punishment instruction and verdict form should be used.

COMMENT

Ark. Code Ann. § 5-41-203. Most of the definitions are found in Ark. Code Ann. § 5-41-201. "Knowingly" is defined in Ark. Code Ann. § 5-2-202

Unlawful interference with access to computers is a Class C felony if the act was committed to defraud or illegally obtain property. Otherwise, it is a Class A misdemeanor.

AMCI 2d 4102.1
UNLAWFUL USE OR ACCESS TO COMPUTERS

_____ *(Defendant)* is charged with the offense of committing unlawful use or access to computers. To sustain this charge the State must prove beyond a reasonable doubt that _____*(defendant)* knowingly and without authorization (used) (caused the use of) (accessed) (attempted to gain access) (or) (caused access to be gained) to a (computer) (system) (network) (telecommunications device) (telecommunications service) (or) (information service).

Definitions

"Access'' means to intercept, instruct, communicate with, store data in, retrieve from or otherwise make use of any resources of a computer, network, or data.

"Computer" means an electronic, magnetic, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with the device. "Computer" also includes any on-line service, internet service, or local bulletin board, any electronic storage device, including a floppy disk or other magnetic storage device, or any compact disk that has read-only memory and the capacity to store audio, video, or written materials.

"Data" means a representation of any form of information, knowledge, facts, concepts, or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed, or has been processed in a system or network.

"Information service" means a service that is designed or has the capability to generate, process, store, retrieve, convey, emit, transmit, receive, relay, record, or reproduce any data, information, image, program, signal, or sound by means of any component, device, equipment, system, or network, including, but not limited to, by means of:

(A) A computer, computer system, computer network, modem, or scanner;

(B) A telephone, cellular phone, satellite phone, pager, personal communications device, or facsimile machine;

(C) Any type of transmitter or receiver; or

(D) Any other component, device, equipment, system, or network that uses analog, digital, electronic, electromagnetic, magnetic, or optical technology.

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Network" means a set of related, remotely connected devices and facilities,

including more than one system, with the capability to transmit data among any of the devices and facilities. "Network" includes, but is not limited to, a local, regional, or global computer network.

"Program" means an ordered set of data representing coded instructions, or statements which can be executed by a computer and cause the computer to perform one or more tasks.

"System" means a set of related equipment, whether or not connected, which is used with or for a computer.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels they would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 4102-VF, AMCI 2d 4102 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilty is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 4102-VF, AMCI 2d 4102 should be used in conjunction with AMCI 2d 4102-EXP and 4102-VF in Stage One. If a verdict of guilty is returned, the appropriate Stage Two punishment instruction and verdict form should be used.

COMMENT

Ark. Code Ann. § 5-41-203. Most of the definitions are found in Ark. Code Ann. § 5-41-201. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Unlawful use or access to computers is a Class C felony if the act was committed to defraud or illegally obtain property. Otherwise, it is a Class A misdemeanor.

AMCI 2d 4102-EXP
UNLAWFUL INTERFERENCE WITH ACCESS TO COMPUTERS — UNLAWFUL USE OR ACCESS TO COMPUTERS — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(Defendant)* guilty of committing (unlawful interference with access to computers) (unlawful use or access to computers), you will so indicate on the verdict form provided to you. You will also make (a) finding(s) about the circumstances of the offense as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 4102 or 4102.1 and 4102-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 4102-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 4102-VF
UNLAWFUL INTERFERENCE WITH ACCESS TO COMPUTERS — UNLAWFUL USE OR ACCESS TO COMPUTERS — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(Defendant)* is guilty of committing (unlawful interference with access to computers) (or) (unlawful use or access to computers).

_____
FOREMAN

We, the Jury, find _____*(Defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the act was committed to (devise) (or) (execute) a scheme (to defraud) (or) (illegally obtain property)?

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This instruction should be used only in conjunction with AMCI 2d 4102-EXP.

AMCI 2d 4102-AD
UNLAWFUL INTERFERENCE WITH ACCESS TO COMPUTERS — UNLAWFUL USE OR ACCESS TO COMPUTERS — AFFIRMATIVE DEFENSE

[That defendant reasonably believed that (he) (she) was authorized to use or access the (computer) (system) (network) (telecommunications device)(telecommunications service) (or) (information service) and the use or access by the defendant was within the scope of that authorization]

(or)

[That defendant reasonably believed that the owner or other person authorized to give consent would authorize the defendant to use or access the (computer) (system) (network) (telecommunications device) (telecommunications service) (or) (information service).]

NOTE ON USE

This instruction should be given in the format of AMCI 2d 601 when the evidence justifies its use.

COMMENT

Ark. Code. Ann. § 5-4-203(d).

AMCI 2d 4103
UNLAWFUL USE OF ENCRYPTION

_____ *(Defendant)* is charged with the offense of unlawful use of encryption. To sustain this charge the State must prove the following beyond a reasonable doubt:

That _____*(defendant)* knowingly (used) or (attempted to use) encryption, directly or indirectly, to (commit) (facilitate) (further) (or) (promote) any criminal offense.

OR

That _____*(defendant)* knowingly (used) or (attempted to use) encryption, directly or indirectly, to (aid) (assist) (or) (encourage) another person to commit any criminal offense.

OR

That _____*(defendant)* knowingly (used) or (attempted to use) encryption, directly or indirectly, to conceal the commission of any criminal offense.

OR

That _____ *(defendant)* knowingly (used) or (attempted to use) encryption, directly or indirectly, to (conceal) (or) (protect) the identity of a person who has committed any criminal offense.

OR

That _____ *(defendant)* knowingly (used) or (attempted to use) encryption, directly or indirectly, to (delay) (hinder) (or) (obstruct) the administration of the law.

Definitions

"Data" means a representation of any form of information, knowledge, facts, concepts, or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed, or has been processed in a system or network.

"Encryption" means the use of any protection or disruptive measure, including, without limitation, cryptography, enciphering, encoding, or a computer contaminant, to

(A) Prevent, impede, delay or disrupt access to any data, information, image, program, signal, or sound;

(B) Cause or make any data, information, image, program, signal, or sound *unintelligible or unusable*; or

(C) Prevent, impede, delay or disrupt the normal operation or use of any component, device, equipment, system, or network.

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Network" means a set of related, remotely connected devices and facilities, including more than one system, with the capability to transmit data among any of the devices and facilities. "Network" includes, but is not limited to, a local, regional, or global computer network.

"Program" means an ordered set of data representing coded instructions, or statements which can be executed by a computer and cause the computer to perform one or more tasks.

"System" means a set of related equipment, whether or not connected, which is used with or for a computer.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels they would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-41-204. Most of the definitions are found in Ark. Code Ann. § 5-41-201. "Knowingly" is defined in Ark. Code Ann. § 5-2-202

Unlawful use of encryption is a Class D felony if the offense concealed by encryption is a Class Y felony, Class A felony, or Class B felony. It is a Class A misdemeanor if the offense concealed is a Class C felony, Class D felony, or an unclassified felony.

AMCI 2d 4104
UNLAWFUL ACT INVOLVING ELECTRONIC MAIL

_____ *(Defendant)* is charged with the offense of committing an unlawful act involving electronic mail. To sustain this charge the State must prove the following beyond a reasonable doubt:

That _____*(defendant)*, with the purpose to (devise) (or) (execute) a scheme to (defraud) (or) (illegally obtain property), knowingly and with purpose to (transmit) (or) (cause to be transmitted) the item of electronic mail to the electronic mail address of one or more recipients without their (knowledge of) (or) (consent to) the transmission, falsified or forged any (data) (information) (image) (program) (signal) (or) (sound) that:

[is contained in the (header) (subject line) (or) (routing instructions) of an item of electronic mail.]

or

[(described) (or) (identified) the (sender) (source) (point of origin) (or) (path of transmission) of an item of electronic mail.]

OR

That _____*(Defendant)*, with the purpose to (devise) (or) (execute) a scheme to (defraud) (or) (illegally obtain property), purposely (transmitted) (or) (caused to be transmitted) an item of electronic mail to the electronic mail address of one or more recipients without their (knowledge of) (or) (consent to) the transmission, if the person (knew) or (had reason to know) that the item of electronic mail (contained) (had been generated with) (or) (had been formatted with):

[An internet domain name that is being used without the consent of the person who holds the internet domain name.]

or

[Any (data) (information) (image) (program) (signal) (or) (sound) that has been used intentionally in the (header) (subject line) (or) (routing instructions) of the item of electronic mail to falsify or misrepresent [the identity of the sender] (or) [the (source) (point of origin) (or) (path of transmission) of the item of electronic mail.]

OR

That _____*(Defendant)*, with the purpose to (devise) (or) (execute) a scheme to (defraud) (or) (illegally obtain property), [knowingly (sold) (gave) (or) (otherwise distributed)] (or) [possessed with the intent to (sell) (give) (or) (otherwise distribute)] any (data) (information) (image) (program) (signal) (or) (sound) which (was designed) (or) (was intended to be used) to falsify or forge any (data) (information) (image) (program) (signal) (or) (sound) that:

[is contained in the (header) (subject line) (or) (routing instructions) of an item of electronic mail.]

or

[(described) (or) (identified) the (sender) (source) (point of origin) (or) (path of transmission) of an item of electronic mail.]

Definitions

"Computer" means an electronic, magnetic, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with the device. "Computer" also includes any on-line service, internet service, or local bulletin board, any electronic storage device, including a floppy disk or other magnetic storage device, or any compact disk that has read-only memory and the capacity to store audio, video, or written materials.

"Data" means a representation of any form of information, knowledge, facts, concepts, or instructions which is being prepared or has been formally prepared and is intended to be processed, is being processed, or has been processed in a system or network.

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Network" means a set of related, remotely connected devices and facilities, including more than one system, with the capability to transmit data among any of the devices and facilities. "Network" includes, but is not limited to, a local, regional, or global computer network.

"Program" means an ordered set of data representing coded instructions, or statements which can be executed by a computer and cause the computer to perform one or more tasks.

"Property" means anything of value and includes a financial instrument, information, electronically produced data, program, and any other tangible or intangible item of value.

"System" means a set of related equipment, whether or not connected, which is used with or for a computer.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels they would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-41-205. Most of the definitions are found in Ark. Code Ann. § 5-41-201. "Knowingly" is defined in Ark. Code Ann. § 5-2-202

Committing an unlawful act involving electronic mail is a Class D felony.

AMCI 2d 4105
COMPUTER PASSWORD DISCLOSURE

_____ (Defendant) **is charged with the offense of committing computer password disclosure. To sustain this charge the State must prove beyond a reasonable doubt that** _____ (Defendant) **purposely and without authorization disclosed a** (number) (code) (password) (or) (other means of access) **to a** (computer) (or) (computer network) **that was subsequently used to access a** (computer) (or) (computer network).

Definitions

"Access'' means to intercept, instruct, communicate with, store data in, retrieve from or otherwise make use of any resources of a computer, network, or data.

"Computer" means an electronic, magnetic, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with the device. "Computer" also includes any on-line service, internet service, or local bulletin board, any electronic storage device, including a floppy disk or other magnetic storage device, or any compact disk that has read-only memory and the capacity to store audio, video, or written materials.

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Network" means a set of related, remotely connected devices and facilities, including more than one system, with the capability to transmit data among any of the devices and facilities. "Network" includes, but is not limited to, a local, regional, or global computer network.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels they would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-41-206. Most of the definitions are found in Ark. Code Ann. § 5-41-201. "Knowingly" is defined in Ark. Code Ann. § 5-2-202

AMCI 2d 4105-EXP
COMPUTER PASSWORD DISCLOSURE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____*(Defendant)*guilty of committing computer password disclosure, you will so indicate on the verdict form provided to you. You will also make (a) finding(s) about the circumstances of the offense as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 4105 and 4105-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 4105-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

Computer password disclosure is a Class D felony if the act was committed to defraud or illegally obtain property. Otherwise, it is a Class A misdemeanor.

AMCI 2d 4105-VF
COMPUTER PASSWORD DISCLOSURE — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(Defendant)* is guilty of committing computer password disclosure.

_____
FOREMAN

We, the Jury, find _____*(Defendant)*not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the act was committed to (devise) (or) (execute) a scheme (to defraud) (or) (illegally obtain property)?

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This instruction should be used only in conjunction with AMCI 2d 4105-EXP.

CHAPTER 52

PUBLIC SERVANT BRIBERY

SYNOPSIS

5201. Reserved

5202. Abuse of Public Trust

5202-EXP. Abuse of Public Trust—Multiple Possible Verdicts

5202-VF Abuse of Public Trust—Verdict Form

5203 Abuse Of Office

AMCI 2d 5202
ABUSE OF PUBLIC TRUST

The Defendant is charged with the offense of abuse of public trust. To sustain this charge the State must prove beyond a reasonable doubt:

[That _____ *(defendant)* (solicited) (accepted) (or) (agreed to accept) on behalf of (a person) (a political party) (or) (an organization) (*or the name of the entity may be inserted in lieu of the generic term)* a benefit from another person *(or the name of the person may be inserted*) upon an agreement or understanding that the other person (*or insert name*) would or might be appointed (a public servant) (or) (designated or nominated as a candidate for public office).]

[That _____ *(defendant)* (offered) (conferred) (or) (agreed to confer) a benefit, the receipt of which

(was intended to influence the [appointment of a public servant] [nomination or designation of a candidate for public office])

(was compensation or consideration for a public servant's (*or insert name of public servant*) (decision) (opinion) (recommendation) (vote) (or) (exercise of discretion) as a public servant).]

[That _____ *(defendant)*, (as a public servant) (as a person elected, appointed, or otherwise designated to become a public servant although not yet occupying the position), (solicited) (accepted) (or) (agreed to accept) a benefit as compensation or consideration for (giving a decision, an opinion, or recommendation) (voting) (or) (exercising discretion) in favor of another person (*or insert name.*]

[That _____ *(defendant)* (offered) (conferred) (or) (agreed to confer) a benefit upon (a public servant) (a person elected, appointed, or otherwise designated to become a public servant although not yet occupying the position) (*or insert name of public servant*), the receipt of which

(was intended to influence the [appointment of a public servant] [nomination or designation of a candidate for public office]) (or)

(was compensation or consideration for a public servant's (*or insert name of public servant*) (decision) (opinion) (recommendation) (vote) (or) (exercise of discretion) as a public servant).]

[It is not a defense to this offense that the decision, opinion, recommendation, vote, or use of discretion, except for the benefit, was otherwise proper.]

Definition

"Public servant" means:

[Any officer or employee of this State or of any political subdivision thereof; or any person exercising the functions of any such officer or employee;] [or]

[Any person acting as an adviser, consultant or otherwise in performing any governmental function (but not including witnesses);] [or]

[Any person elected, appointed or otherwise designated to become a public

servant, although not yet occupying that position.]

NOTE ON USE

If appropriate, names may inserted in the instruction in lieu of generic terms.

If it is necessary for the jury to make a finding as to the value of the benefit, prepare multiple possible verdict forms, such as AMCI 2d 3608-EXP and 3608-VF, appropriately modified.

COMMENT

Ark. Code Ann. § 5-52-101. "Public servant" is defined in section 5-52-102. This offense is a Class B felony if the value of the benefit is $25,000 or more; Class C felony if the value of the benefit is $5,000 or more but less than $25,000; Class D felony if the value of the benefit is $500 or more but less than $5,000.00; Class A misdemeanor if the value of the benefit is less than $500.00 or the value cannot be determined.

Section 5-52-101(b) provides that it is not a defense to this offense that the decision, opinion, recommendation, vote, or use of discretion, except for the benefit, was otherwise proper.

The offense of abuse of public trust was adopted in 2005 and public servant bribery, which was the subject of AMCI 2d 5201, was repealed at that time. *See* Act 1994 of 2005.

AMCI 2d 5202-EXP
ABUSE OF PUBLIC TRUST—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant)* guilty of abuse of public trust, you will so indicate on the verdict form provided to you. You will also make additional findings about the offense.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5202 and 5202-VF if it is necessary for the jury to make a finding as to the value of the benefit.

AMCI 2d 5202-VF
ABUSE OF PUBLIC TRUST—VERDICT FORM

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* **is guilty of abuse of public trust.**

_____
FOREMAN

We, the Jury, find _____ *(defendant)* **not guilty.**

_____
FOREMAN]

If your verdict is guilty, you shall make ONE of the following findings:

We, the jury, find beyond a reasonable doubt that the value of the benefit was:

(1) $25,000 or more.

_____
FOREMAN

(2) $5,000 or more but less than $25,000.

_____
FOREMAN

(3) less than $5,000 but more than $500.

_____
FOREMAN

(4) is less than $500 or the value of the benefit cannot be determined.

_____
FOREMAN

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5202 and 5202-EXP if it is necessary for the jury to make a finding as to the value of the benefit.

AMCI 2d 5203
ABUSE OF OFFICE

The Defendant is charged with the offense of abuse of office. To sustain this charge the State must prove beyond a reasonable doubt:

FIRST: That _____ *(defendant)* was (a public servant) (a person elected, appointed, or otherwise designated to become a public servant although not yet occupying the position);

SECOND: That _____ *(defendant)* with the purpose of (benefiting in a pecuniary fashion) (obtaining a sexual favor for (himself) (herself) (another person) (or) (harming another person)); and

THIRD: That _____ *(defendant)* knowingly (committed an unauthorized act which purported to be an act of (his (her) office) (or) (omitted to perform a duty imposed on (him) (her) by law or clearly inherent in the nature of (his) (her) office).

Definition

"Public servant" means:

Any officer or employee of this State or of any political subdivision thereof; or any person exercising the functions of any such officer or employee; or

Any person acting as an adviser, consultant or otherwise in performing any governmental function (but not including witnesses); or

Any person elected, appointed or otherwise designated to become a public servant, although not yet occupying that position.

"Knowingly."—A person acts knowingly (or with knowledge) with respect to his conduct or the circumstances that exist at the time of his act when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purpose."—A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

NOTE ON USE

If appropriate, names may be inserted in the instruction in lieu of generic terms.

If it is necessary for the jury to make a finding as to the value of the benefit, use AMCI 2d 5202-EXP and 5202-VF and modify appropriately.

COMMENT

Ark. Code Ann. § 5-52-107. "Public servant" is defined in section 5-52-102.

This offense is a (1) Class B felony if the value of the benefit is $25,000 or more; (2) Class C felony if the value of the benefit is $5,000 or more but less than $25,000; (3) Class D felony if the value of the benefit is $500 or more but less than $5,000; or (4) Class A misdemeanor if the value of the benefit is less than $500

or the value of the benefit cannot be determined.

Chapter 53

OFFENSES RELATED TO JUDICIAL PROCEEDINGS

5301.	Definitions For Chapter 53
5302.	Perjury
5302-D.	Perjury — Retraction As A Defense
5302-EXP.	Perjury — Stage One Verdict Explanation — Multiple Possible Verdicts
5302-VF.	Perjury — Stage One Verdict Form — Multiple Possible Verdicts
5303.	False Swearing
5304.	Witness Bribery
5305.	Intimidating A Witness
5306.	Tampering
5307.	Tampering With Physical Evidence
5308.	Juror Bribery
5309.	Intimidating A Juror, Witness, Informant
5310.	Jury Tampering
5311.	Threatening A Judicial Official Or Juror
5311-AD.	Affirmative Defense To Threatening A Judicial Official or Juror
5311-EXP.	Threatening A Judicial Official Or Juror — Stage One Verdict Explanation — Multiple Possible Verdicts
5311-VF.	Threatening A Judicial Official Or Juror — Stage One Verdict Form — Multiple Possible Verdicts

(Text continued on page 53–3)

AMCI 2d 5301

DEFINITIONS FOR CHAPTER 53

As used in this Chapter, these terms have the following meanings:

(1) "Juror" means [a member of any (grand) (petit) (coroner's) (justice of the peace) (chancery court) jury] [or] [any person who has been (drawn) (or) (summoned) as a prospective juror].

(2) "False material statement" means any false statement, regardless of its admissibility under the rules of evidence, which affects or could affect the [course or outcome of an official proceeding] [or] [(action) (or) (decision) of a public servant in the performance of any governmental function].

(3) "Oath" means swearing, affirming and every other mode authorized by law of attesting to the truth of that which is stated. Written statements shall be treated as if made under oath if:

[the statement was made (on) (or) (pursuant to) a form bearing notice, authorized by law, to the effect that a false statement made pursuant thereto is punishable.]

[the statement recites that it was made under oath, and the declarant was aware of such recitation at the time he signed the statement and intended that the statement should be considered a sworn statement.]

[the statement is (made) (or) (used) (or) (offered) with the purpose that it be accepted as compliance with a (statute) (or) (rule) (or) (regulation) which requires (a statement under oath) (or) (other like form of attestation to the truth of the matter contained in the statement).]

(4) "Official proceeding" means a proceeding heard before any [legislative] [or] [judicial] [or] [administrative] [or] [other government] [agency] [or] [official] **authorized to hear evidence under oath, including any** [referee] [or] [hearing examiner] [or] [commissioner] [or] [notary] [or] [other person] **taking** [testimony] [or] [depositions] **in any such proceedings.**

(5) "Testimony" includes [oral] [or] [written] [statements] [or] [documents] [or] [any other material] **that** [is] [are] [or] [could be] **offered by a witness in an official proceeding.**

(6) "Threat" means a menace, however communicated, to: [use physical force against any person.]

[harm substantially any person with respect to his (property) (or) (health) (or) (safety) (or) (business) (calling) (career) (or) (financial condition) (or) (reputation) (or) (a personal relationship).]

(7) "Witness" means:

[any person for whose attendance to give testimony at an official proceeding any process has issued,]

[any person who (is holding) (or) (plans to hold) himself available to give testimony at an official proceeding,]

whether his testimony is [sought] [or] [offered] **by** [personal attendance at the official proceedings] [or] [deposition] [or] [affidavit].

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out here instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-101.

AMCI 2d 5302

PERJURY

_____ *(Defendant)* is charged with the offense of perjury. To sustain this charge the State must prove the following beyond a reasonable doubt:

[In an official proceeding, _____ *(defendant)* knowingly made a false material statement under an oath required or authorized by law.]

[In an official proceeding, _____ *(defendant)* knowingly made a false unsworn declaration under the Uniform Unsworn Foreign Declarations Act.]

[**First**, in an official proceeding, _____ *(defendant)* knowingly applied for or submitted an absentee ballot for a (city) (school district) (county) (state) (federal) election; and

Second, that _____ *(defendant)* knew that (he) (she) was unlawfully applying for or unlawfully submitting the absentee ballot.]

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 5301 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

The Code provides that lack of knowledge of the materiality of the statement is not a defense to a charge of perjury. § 5-53-102. The court should so instruct the jury when the proof raises that issue.

AMCI 2d 5302-D should be given when the defense of retraction is relied upon.

When there is more than one defendant, the instruction should be appropriately modified.

This instruction should be used in conjunction with AMCI 2d 5302-EXP and 5302-VF if the evidence affords the jury the option of selecting a verdict from the alternatives provided therein. Otherwise, AMCI 2d 8101 and 8301-VF should be used.

COMMENT

Ark. Code Ann. § 5-53-102. "False material statement," "oath," and "official proceeding" are defined in § 5-53-101.

Ark. Code Ann. § 5-53-101(a)(3) should be consulted for the manner in which

certain written statements are treated as if made under oath; Ark. Code Ann. § 5-53-106 for special rules affecting the proof of inconsistent statements; Ark. Code Ann. § 5-53-107 for the need for corroboration; and Ark. Code Ann. § 5-53-105 for the effect of irregularities in connection with the oath.

Except in a prosecution based upon inconsistent statements made under oath in a perjury or false swearing prosecution, proof of the falsity of a statement requires corroborating evidence. Ark. Code Ann. § 5-53-107; *Fleming v. State*, 14 Ark. App. 205, 686 S.W.2d 803 (1985).

Perjury may be a Class C felony or a Class A misdemeanor.

AMCI 2d 5302-D

PERJURY—RETRACTION AS A DEFENSE

_____ *(Defendant)* asserts the defense of retraction. A retraction is a defense only if:

First: The retraction was made in a manner showing a complete and voluntary withdrawal of the perjured statement; [and]

[Second: The retraction was made during the course of the same official proceeding in which the perjured statement was made;] [and]

[Third:] [The retraction was made before the subject matter of the official proceeding was submitted to the (judge) (jury) (_____) *(other trier of fact)* for a decision.]

The defendant, in asserting the defense of retraction, is required only to raise a reasonable doubt in your minds. Consequently, if you believe that the defense of retraction has been shown to exist, or if the evidence with regard to a retraction leaves you with a reasonable doubt as to the defendant's guilt of perjury, then you must find him not guilty.

NOTE ON USE

This instruction should be given in Stage One.

In most cases only the first subparagraph need be given, because ordinarily there will be no dispute about the retraction's having been made in the same proceeding and before the case was submitted to the trier of fact.

COMMENT

Ark. Code Ann. § 5-53-104.

Retraction is not designated by the Code as an affirmative defense. Therefore, under Ark. Code Ann. § 5-1-111(c), if there is evidence to support the defense it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

AMCI 2d 5302-EXP

PERJURY—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of perjury, you will so indicate on the verdict form provided you. You will also indicate on the verdict form whether the evidence establishes the defense of retraction.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5302 and 5302-VF where the evidence affords the jury a rational basis for finding that the evidence establishes the defense of retraction. In other cases, use AMCI 2d 5302 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 5302-VF

PERJURY—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of perjury.

_____

FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* made a complete and voluntary withdrawal of the perjured statement in the course of the same official proceeding in which the statement was made before the subject matter of the proceeding was submitted to the [judge] [jury] [_____] *(trier of fact)* for a decision?

YES _____

NO _____

_____

FOREMAN

If your answer is *yes*, you will complete the following:

[SECOND:]

Do you, the Jury, find beyond a reasonable doubt that, in making the retraction, _____ *(defendant)* caused the termination of the official proceeding by reason of prejudice to a legal right of a party to the proceeding?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 5302-EXP.

Retraction is a complete defense to a perjury charge only where the tests set out in AMCI 2d 5302-D are met and the retraction does not cause the termination of an official proceeding by reason of prejudice to a party. Therefore, the first

question to be answered is whether the defendant made a retraction meeting the criteria of AMCI 2d 5302-D. If the jury finds that the defendant did not retract, then it will answer the first question posed on the form in the negative, and it will leave the second question unanswered. If the jury finds that the defendant made a voluntary retraction, it must then find whether the retraction caused the termination of a proceeding. If it did, then the defendant is guilty of a Class A misdemeanor.

If the State does not contend that the retraction caused termination of the proceeding due to prejudice to a party but that, instead, the retraction was deficient in some other respect, then the second question need not be submitted to the jury.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 5303

FALSE SWEARING

_____ *(Defendant)* is charged with the offense of false swearing. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* made a false material statement other than in an official proceeding;

Second: That he knew the statement was false; and

Third: That he made the statement under (under an oath required or authorized by law) (in an unsworn declaration under the Uniform Unsworn Foreign Declarations Act).

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 5301 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

The Code provides that lack of knowledge of the materiality of the statement is not a defense to a charge of false swearing. The court should so instruct the jury when the proof raises that issue.

When there is more than one defendant, the instruction should be appropriately modified.

COMMENT

Ark. Code Ann. § 5-53-103. "False material statement," "oath," and "official proceeding" are defined in § 5-53-101.

Ark. Code Ann. § 5-53-101(a)(3) should be consulted for the manner in which certain written statements are treated as if made under oath; Ark. Code Ann. § 5-53-106 for special rules affecting the proof of inconsistent statements; Ark. Code Ann. § 5-53-105 for the effect of irregularities in connection with the oath.

Except in a prosecution based upon inconsistent statements made under oath in a perjury or false swearing prosecution, proof of the falsity of a statement requires corroborating evidence. Ark. Code Ann. § 5-53-107; *Fleming v. State*, 14 Ark. App. 205, 686 S.W.2d 803 (1985).

False swearing is not a lesser included offense of perjury.

False swearing is a Class A misdemeanor.

[Next Page is 53-15]

AMCI 2d 5304 WITNESS BRIBERY

_____ *(Defendant(s))* [is] [are] charged with the offense of witness bribery. **To sustain this charge the State must prove beyond a reasonable doubt that_____ (defendant(s)):**

[(offered) (or) (conferred) (or) (agreed to confer) any benefit (to) (upon) (a witness) (or) (a person [he] [they] believed might be called as a witness) with the purpose of:

(influencing the testimony of that person)

(inducing that person to avoid legal process summoning him to testify)

(inducing that person to absent himself from an official proceeding to which he had been legally summoned).]

[(solicited) (or) (accepted) (or) (agreed to accept) any benefit for the purpose of:

(influencing [his] [their] testimony)

(inducing [him] [them] to avoid legal process summoning [him] [them] to testify)

(inducing [him] [them] to absent [himself] [themselves] from an official proceeding to which [he] [they] had been legally summoned).]

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 5301 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-108. "Witness," "testimony," and "official proceeding" are defined in § 5-53-101. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Witness bribery is a Class B felony.

AMCI 2d 5305 INTIMIDATING A WITNESS

_____ *(Defendant(s))* [is] [are] **charged with the offense of intimidating a witness. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* **threatened a** [witness] [or] [person (he) (they) believed might be called as a witness]; **and**

Second: That [he] [they] **did so with the purpose of:**

[influencing the testimony of that person]

[inducing that person to avoid legal process summoning him to testify]

[inducing that person to absent himself from an official proceeding to which he had been legally summoned].

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 5301 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-109. "Witness," "testimony," "threat," and "official proceeding" are defined in § 5-53-101. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Intimidating a witness is a Class B felony.

See Comment to AMCI 2d 5309 which also constitutes an offense of intimidation of a witness pursuant to Section 5-53-114.

AMCI 2d 5306 TAMPERING

_____ *(Defendant(s))* [is] [are] **charged with the offense of tampering. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)) induced or attempted to induce_____(another person) to:

[(testify) (or) (inform) falsely]

[withhold any unprivileged (testimony) (or) (information) (or) (document) (or) (_____)*(thing)*]

[elude legal process summoning him to testify or supply evidence (whether such process was lawfully issued or not)]

[absent himself from any (proceeding) (or) (investigation) to which he had been summoned].

And second: That_____(defendant(s)) did so, believing that an [official proceeding] [or] [investigation] **was** [pending] [or] [about to be instituted].

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are all set out in AMCI 2d 5301 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-110. "Testimony" and "official proceeding" are defined in § 5-53-101. The testimony, information, documents, or things need not be admissible or have probative value to be included within this offense. § 5-53-110(a)(2).

Tampering is a Class A misdemeanor except with regard to the first bracketed option, testifying (Ark. Code Ann. Section 5-53-110(a)(1)), in which case, it is a Class D felony.

AMCI 2d 5307 TAMPERING WITH PHYSICAL EVIDENCE

_____ *(Defendant(s))* [is] [are] **charged with the offense of tampering with physical evidence. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____**(defendant(s))** __[altered]__ [or] __[destroyed]__ [or] __[suppressed]__ [or] __[removed]__ [or] __[concealed]__ **any** __[record]__ [or] __[document]__ [or] [_____]*(thing)*; **and**

Second: That [he] [they] **did so with the purpose of impairing its** __[verity]__ [or] __[legibility]__ [or] [availability in any (official proceeding) (or) (investigation)].

Definitions

"Official proceeding."—means a proceeding heard before any legislative, judicial, administrative, or other government agency, or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions in any such proceedings.

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

This crime is a Class D felony if the accused impairs or obstructs the prosecution or defense of a felony. Otherwise, it is a Class B misdemeanor. In the event there is an issue as to whether the prosecution or defense of a felony was impaired or obstructed, instructions patterned after AMCI 2d 3708-EXP and 3708-VF should be given. If there is a rational basis for a conviction of the offense in only one degree, use AMCI 2d 8101 and 8301-VF and appropriate Stage Two instructions and verdict forms.

COMMENT

Ark. Code Ann. § 5-53-111. "Official proceeding" is defined in § 5-53-101. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

AMCI 2d 5308 JUROR BRIBERY

_____*(Defendant(s))* [is] [are] **charged with the offense of juror bribery. To sustain this charge the State must prove beyond a reasonable doubt that_____(defendant(s)):**

[(offered) (or) (conferred) (or) (agreed to confer) any benefit (to) (upon) a juror with the purpose of influencing the juror's vote, decision, or other action as a juror.]

[(solicited) (or) (accepted) (or) (agreed to accept) any benefit for the purpose of influencing (his) (their) vote, decision, or other action as a juror.]

Definitions

"Juror."—means a member of any jury, including grand, petit, coroner's, justice of the peace, or circuit court juries, and further includes any person who has been drawn or summoned as a prospective juror.

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-113. "Juror" is defined in § 5-53-101. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Juror bribery is a Class C felony.

AMCI 2d 5309 INTIMIDATING A JUROR, WITNESS, INFORMANT

_____ (Defendant) **is charged with the offense of intimidating** [a juror] [a witness] [or] [an informant]. **To sustain this charge, the State must prove beyond a reasonable doubt that** _____ (defendant) **threatened**

[a juror with the purpose of influencing (his/her) vote or decision.]

[(a witness) (or) (an informant) with the purpose of influencing (his/her) statement or testimony.]

DEFINITION

"Informant" is a person who provides information to any law enforcement agency in an effort to assist that law enforcement agency in solving crimes and apprehending persons suspected of criminal offenses.

"Purpose."—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-114. "Informant" is defined in Section 5-53-114 (C); "juror" and "witness" are defined in AMCI 2d 5301. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Act 1994 of 2005 broadened the scope of Section 5-53-114 to include a witness and an informant, but see AMCI 2d 5305 which also constitutes an offense of intimidation of a witness pursuant to Section 5-53-109.

This offense is a Class B felony.

AMCI 2d 5310 JURY TAMPERING

_____ *(Defendant(s))* [is] [are] **charged with the offense of jury tampering. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That_____(defendant(s)) attempted directly or indirectly to communicate with a juror, other than as a part of the official proceedings in which the juror was participating; and

Second: That [he] [they] **did so with the purpose of influencing the juror's vote, decision, or other action as a juror.**

Definition

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-115. "Juror" and "official proceeding" are defined in AMCI 2d 5301. "Purpose" is defined in Ark. Code Ann. § 5-2-202.

Jury tampering is a Class C felony.

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AMCI 2d 5311

THREATENING A JUDICIAL OFFICIAL OR JUROR

_____ *(Defendant)* is charged with the offense of threatening a judicial official or juror. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)*, directly or indirectly, (uttered) (or) (made) a threat to cause (physical injury to) (damage to property owned or possessed by) _____ *(victim)*; and

Second: That _____ *(defendant)* (knew) (or) (should have known) that _____ *(victim)* was [a judicial official] [a juror] [the spouse of a (judicial official) (juror)] [(the child of a (judicial official) (juror)].

Definitions

"Judicial official." — means any (district judge) (circuit judge) (Court of Appeals judge) (any Supreme Court Justice) (or) (any person authorized to hear evidence under oath).

"Juror." — means any citizen of the state impaneled as a (grand) (petit) juror.

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Physical injury." — means the impairment of physical condition or the infliction of substantial pain or the infliction of bruising, swelling, or visible marks associated with physical trauma;

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-53-202. "Judicial official" and "juror" are defined in Ark. Code Ann. § 5-53-201. "Physical injury" is defined in Ark. Code Ann. § 5-1-102. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Threatening a judicial official or juror is a Class B felony if the defendant threatens to cause death or serious physical injury. Otherwise, it is a Class C felony.

AMCI 2d 5311-AD

AFFIRMATIVE DEFENSE TO THREATENING A JUDICIAL OFFICIAL OR JUROR

That at the time _____ *(defendant)* engaged in the conduct, the threat did not relate to _____ *(victim's)* status or actions as [a judicial official] [a juror] [the spouse of a (judicial official) (juror)] [the child of a (judicial official) (juror)].

NOTE ON USE

This instruction should be given in the format of AMCI 2d 601 when the evidence justifies its use.

COMMENT

Ark. Code. Ann. § 5-53-202(c).

AMCI 2d 5311-EXP

THREATENING A JUDICIAL OFFICIAL OR JUROR— STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant)* guilty of threatening a judicial official or juror, you will so indicate on the verdict form provided to you. You will also make a finding about the circumstances of the offense as directed on the form. You are further instructed that the term "serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5311 and 5311-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 5311-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

COMMENT

Ark. Code Ann. § 5-53-202(b)(1).

AMCI 2d 5311-VF

THREATENING A JUDICIAL OFFICIAL OR JUROR — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of offense of threatening a judicial official or juror.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* threatened to cause death or serious physical injury to _____ *(victim)*.

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This instruction should be in conjunction with AMCI 2d 5311 and 5311-EXP where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in this form. Ark. Code Ann. § 5-53-202(b)(1)(B) also makes this offense a Class B felony when the defendant threatens "substantial damage" to the property of a judicial official or juror, but the Committee did not include this alternative in the verdict form in the absence of statutory guidance as to what constitutes "substantial damage."

COMMENT

Ark. Code Ann. § 5-53-202(b)(1).

CHAPTER 54

OBSTRUCTING GOVERNMENTAL OPERATIONS

SYNOPSIS

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5416-VF. Assisting in or Furnishing Implement For Escape—Stage One Verdict Form—Multiple Possible Verdicts

5417. Furnishing Implement For Unauthorized Departure

5417-EXP. Furnishing Implement For Unauthorized Departure—Stage One Verdict Explanation—Multiple Possible Verdicts

5417-VF. Furnishing Implement For Unauthorized Departure—Stage One Verdict Form—Multiple Possible Verdicts

5418. Furnishing Prohibited Articles

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5422-EXP. Fleeing—Stage One Verdict Explanation—Multiple Possible Verdicts

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5423. Filing False Report With a Law Enforcement Agency

5423-EXP. Filing False Report With Law Enforcement Agency—Multiple Possible Verdicts

5423-VF. Filing False Report With Law Enforcement Agency—Multiple Possible Verdicts

(Text continued on page 54-3)

AMCI 2d 5401
DEFINITIONS

As used in this Chapter, these terms have the following meanings:

(1) "Correctional facility" means any place used for the confinement of persons [(charged with) (or) (convicted of) an offense] [or] [confined under a court order].

(2) "Custody" means [actual] [or] [constructive] **restraint by a law enforcement officer pursuant to** [an arrest] [or] [court order]. **Custody does not include detention in a** [correctional facility] [or] [juvenile training school] [or] [state hospital].

(3) "Escape" means the unauthorized departure of a person from custody or a correctional facility.

(4) "Governmental function" means any activity which a public servant is legally authorized to undertake on behalf of any governmental unit he serves.

(5) "Implement for escape" means any weapon, tool, or other thing which may be useful for escape.

(6) "Implement for unauthorized departure" means any weapon, tool, or other thing which may be useful for unauthorized departure.

(7) "Juvenile training school" means any facility established and maintained by [the State of Arkansas] [or] [any political subdivision of the State of Arkansas] **for the custody, care, education and rehabilitation of** [delinquent] [or] [dependent] [or] [neglected] **juveniles.**

(8) "Physical force" means any [bodily impact] [or] [restraint] [or] [confinement] [or] [the threat of (bodily impact) (or) (restraint) (or) (confinement)].

(9) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. ["Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.]

(10) A "weapon" includes a firearm or anything manifestly designed, made, adapted, or capable of being adapted to inflict physical injury and anything that in the manner of its use or intended use is capable of causing physical injury.

(11) "Deadly weapon" means:

(a) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

(b) anything that in the manner of its use or intended use is capable of causing death or serious physical injury.

(12) "Public record" includes all official books, papers, exhibits or records

of any type required by law to be created by or received and retained in any governmental office or agency, affording notice or information to the public or constituting a memorial of an act or transaction of a public office or public servant.

(13) "The Arkansas State Hospital" includes any subdivision or facility thereof and any hospital established by law or legally designated for similar purposes.

COMMENT

Ark. Code Ann. § 5-54-101.

"Deadly weapon" is defined in § 5-1-102.

AMCI 2d 5402
RESISTING ARREST

_____ *(Defendant(s))* [is] [are] **charged with the offense of resisting arrest. To sustain this charge the State must prove beyond a reasonable doubt that** [he] [they] **knowingly** [(used) (or) (threatened to use)] [(physical force) (or) (any [other] means that created a substantial risk of physical injury to any person)] **in resisting a person known by** [him] [them] **to be a law enforcement officer making an arrest.**

[It is no defense to a charge of resisting arrest that the law enforcement officer lacked legal authority to make the arrest, provided he was acting under color of his official authority.]

Definitions

"Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

"Physical force" means any [bodily impact] [or] [restraint] [or] [confinement] [or] [the threat of (bodily impact) (or) (restraint) (or) (confinement)].

"Physical injury" means the impairment of physical condition or the infliction of substantial pain or the infliction of substantial bruising, swelling or visible marks associated with physical trauma.

"Knowingly." — A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-103. "Law enforcement officer" and "physical injury" are defined in Ark. Code Ann. § 5-1-102. "Physical force" is defined in Ark. Code Ann. § 5-54-101. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Carter & Thompson v. State, 9 Ark. App. 206, 657 S.W.2d 213 (1983) recognizes a defense not explicitly set out in the justification statutes where the defendant contends that he used force to defend himself against excessive force used in making the arrest. *See* AMCI 2d 704.1

Resisting an arrest is a Class A misdemeanor.

AMCI 2d 5403
REFUSAL TO SUBMIT TO ARREST

_____ *(Defendant(s))* [is] [are] **charged with the offense of refusal to submit to arrest. To sustain this charge the State must prove beyond a reasonable doubt that [he] [they] knowingly refused by active or passive means to submit to an arrest by a person known by** [him] [them] **to be a law enforcement officer.**

[It is no defense to a charge of refusal to submit to arrest that the law enforcement officer legal authority to make the arrest, provided he was acting under color of his official authority.]

Definitions

"Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

"Knowingly."— A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-103. "Law enforcement officer" is defined in Ark. Code Ann. § 5-1-102(12). "Knowingly" is defined in Ark. Code Ann. § 5-2-202(2).

Carter & Thompson v. State, 9 Ark. App. 206, 657 S.W.2d 213 (1983) recognizes a defense not explicitly set out in the justification statutes where the defendant contends that he used force to defend himself against excessive force used in making the arrest. *See* AMCI 2d 704.1. Definitions of additional terms used in this instruction are set out in *Pursley v. State,* 302 Ark. 471, 791 S.W.2d 359 (1990).

Refusing to submit to arrest is a Class B misdemeanor.

AMCI 2d 5404
INTERFERENCE WITH A LAW ENFORCEMENT OFFICER

_____ *(Defendant(s))* [is] [are] **charged with the offense of interference with a** [*law enforcement*] [*code enforcement*] **officer. To sustain this charge the State must prove beyond a reasonable doubt that**

_____ *(defendant(s))* **knowingly** [employed] [or] [threatened to employ] **physical force against a** [*law enforcement*] [*code enforcement*] **officer engaged in performing his official duties.**

Definitions

"Code enforcement officer" means an individual charged with the duty of enforcing a municipal code, municipal ordinance, or municipal regulation as defined by a municipal code, municipal ordinance or municipal regulation. It includes an animal control officer.

"Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

"Physical force" means any [bodily impact] [or] [restraint] [or] [confinement] [or] [the threat of (bodily impact) (or) (restraint) (or) (confinement)].

"Knowingly." — A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

If defendant is charged with using or threatening to use deadly physical force, the definition of deadly physical force from AMCI 2d 705 should be given.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5404-VF, AMCI 2d 5404 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5404-VF, AMCI 2d 5404 should be used in conjunction with 5404-EXP and 5404-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-54-104. "Law enforcement officer" is defined in § 5-1-102. "Code enforcement officer" is defined in § 5-54-104. "Physical force" is defined in § 5-54-101. "Knowingly" is defined in § 5-2-202.

Carter & Thompson v. State, 9 Ark. App. 206, 657 S.W.2d 213 (1983)

recognizes a defense not explicitly set out in the justification statutes where the defendant contends that he used force to defend himself against excessive force used in making the arrest. *See* AMCI 2d 704.1.

Interference with an officer may be a Class C felony or a Class A misdemeanor.

AMCI 2d 5404-EXP
INTERFERENCE WITH A LAW ENFORCEMENT OFFICER — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* **guilty of interference with a** [*law enforcement*] [*code enforcement*] **officer** [or _____ (lesser included offense)], **you will so indicate on the verdict form provided you. You will also make** [a] **finding** [s] **about the circumstances of the offense, as directed on the form.**

If you reach a verdict of not guilty, you will indicate this on the verdict form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5404 and 5404-VF where the evidence affords the jury a rational basis for selecting a verdict from alternatives set out in 5404-VF. In other cases, use AMCI 2d 5404 in conjunction with AMCI 2d 8101 and 8301-VF.

Where a lesser included offense instruction has been given, the bracketed reference to the lesser included offense should be given.

AMCI 2d 5404-VF
INTERFERENCE WITH A LAW ENFORCEMENT OFFICER — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* **is guilty of interference with a** [*law enforcement*] [*code enforcement*] **officer.**

_____

FOREMAN

[We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of _____ *(lesser included offense).*

_____

FOREMAN]

We, the Jury, find _____**(defendant) not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

[Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* used or threatened to use deadly physical force?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* was assisted by one or more other persons, and that physical injury to the officer resulted? [The term "other persons" includes a co-defendant.]

YES _____

NO _____

_____

FOREMAN]

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 5404-EXP.

Where the jury has been instructed on a lesser included offense, the bracketed reference to the lesser included offense should be given.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 5405
HINDERING APPREHENSION OR PROSECUTION

_____ *(Defendant(s))* [is] [are] **charged with the offense of hindering apprehension or prosecution. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____(Defendant(s))

[(harbored) (or) (concealed) _____ *(person(s) allegedly aided)*; (or)]

[(provided) (or) (aided in providing) _____ *(person(s) allegedly aided)* with (a weapon) (or) (money) (or) (transportation) (or) (disguise) (or) (other means of [avoiding apprehension] [or] [avoiding discovery] [or] [effecting escape]); (or)]

[by means of (force) (or) (intimidation) (or) (the threat of [force] [or] [intimidation]) (or) (deception), (prevented) (or) (obstructed) anyone from performing an act that might have aided in the (discovery) (or) (apprehension) (or) (identification) of _____ *(person(s) allegedly aided)*; (or)]

[(concealed) (or) (altered) (or) (destroyed) (or) (suppressed the discovery of) any (fact) (or) (information) (or) (other thing) related to the crime which might have aided in the (discovery) (or) (apprehension) (or) (identification) of _____ *(person(s) allegedly aided)*; (or)]

[warned _____ *(person(s) allegedly aided)* of impending (discovery) (or) (apprehension) (or) (identification); (or)]

[volunteered false information to a law enforcement officer; (or)]

[(lied) (or) (attempted to provide erroneous [information] [documents] [or] [other instrumentalities] which he knew to be false) to a certified law enforcement officer that (detracted from the true course of the investigation) (or) (inhibited the logical or orderly progress of the investigation;)]

And, second: That _____(defendant(s)) so acted with the purpose of hindering the [apprehension] [or] [prosecution] [or] [conviction] [or] [punishment of] _____ *(person(s) allegedly aided)* **for an offense.**

[To prove the offense of _____ *(applicable offense)*, the State must prove beyond a reasonable doubt that _____ *(persons allegedly aided)*:

(insert appropriate elements from instruction on applicable felony and repeat this paragraph for each offense upon which the court is instructing)].

Definitions

"Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious objective to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Where there is a dispute about whether the person allegedly committed any offense or where the conduct of the person assisted might constitute more than one offense, the last bracketed paragraph defining all offenses at issue should be given, and this instruction should be used in conjunction with AMCI 2d 5405-EXP and 5405-VF.

Where the evidence does not afford the jury the option of selecting a verdict from the alternative set out in AMCI 2d 5405-VF, AMCI 2d 5405 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where there is an issue as to whether a law enforcement officer is "certified", counsel should prepare necessary instructions.

COMMENT

Ark. Code Ann. § 5-54-105. "Law enforcement officer" is defined in § 5-1-102. "Purpose" is defined in § 5-2-202. "Certified law enforcement officer" is defined in Ark. Code Ann. § 12-15-201.

Hindering apprehension is not a lesser-included offense available to one charged as an accomplice. *Ritchie v. State,* 31 Ark. App. 177, 790 S.W.2d 919 (1990).

For sentencing purposes, the classification of hindering apprehension depends on the classification of the hindered offense or the circumstances of the conduct.

AMCI 2d 5405-EXP
HINDERING APPREHENSION OR PROSECUTION — STAGE ONE
VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____(defendant(s)) guilty of hindering apprehension or prosecution, you will so indicate on the verdict form provided you. You will also make [a] finding[s] about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5405 and 5405-VF in circumstances described in the Note on Use to AMCI 2d 5405. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 5405-VF
HINDERING APPREHENSION OR PROSECUTION — STAGE ONE
VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____(defendant) is guilty of hindering apprehension or prosecution.

_____

FOREMAN

We, the Jury, find _____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall make [ONE of] the following finding[s]:

We, the Jury, find beyond a reasonable doubt that _____ *(person(s) allegedly aided)* had committed _____ *(offense)*.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 5405-EXP. The last paragraph should be repeated as often as necessary to set out all offenses submitted for the jury's consideration.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

If the evidence raises an issue as to whether a defendant stands to the person allegedly assisted in one of the relationships set out in Ark. Code Ann. § 5-54-105(b), an appropriately modified instruction should be given. When that part of the instruction is given that requires a defendant to prove his relationship to the person assisted by a preponderance of the evidence, the definition of preponderance of the evidence taken from AMCI 2d 601 should be given. If the existence of the required relationship is an undisputed fact, then the jury need not be instructed as to the burden of proof on this issue.

The person allegedly aided should be identified if his identity is known.

AMCI 2d 5406
AIDING CONSUMMATION OF OFFENSE

_____ *(Defendant(s))* [is] [are] **charged with the offense of aiding the consummation of an offense. To sustain this charge the State must prove beyond a reasonable doubt that _____(defendant(s)) knowingly aided** [another person] [_____] *(another person)* **in the commission of _____(offense allegedly aided) by** [(safeguarding) (or) (securing) the proceeds of that offense] [or] [converting the proceeds of _____ *(offense allegedly aided)* into the negotiable funds].

[To prove the offense of _____ *(offense allegedly aided)* the State must prove beyond a reasonable doubt that _____ *(person(s) allegedly aided)*:

(Insert appropriate elements from instruction on applicable felony and repeat this paragraph for each offense upon which the court is instructing.)]

Definition

"Knowingly."—A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

The person allegedly aided should be named if his identity is known. Otherwise, the language "another person" should be used.

Where there is a dispute about whether the offense aided was committed or where the conduct might constitute more than one aided offense, the last bracketed paragraph defining all aided offenses at issue should be given, and this instruction should be used in conjunction with AMCI 2d 5406-EXP and 5406-VF.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5406-VF, AMCI 2d 5406 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

COMMENT

Ark. Code Ann. § 5-54-106. "Knowingly" is defined in § 5-2-202.

Aiding consummation of an offense is a Class D felony when the offense aided is a felony. It is a Class A misdemeanor when the offense aided is a misdemeanor.

AMCI 2d 5406-EXP
AIDING CONSUMMATION OF OFFENSE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____(defendant(s)) guilty of aiding the consummation of an offense, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5406 and 5406-VF in circumstances described in the Note on Use to AMCI 2d 5406. In other cases use AMCI 2d 8101 and 8301-VF.

AMCI 2d 5406-VF
AIDING CONSUMMATION OF OFFENSE — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____(defendant) is guilty of aiding the consummation of an offense.

_____

FOREMAN

We, the Jury, find _____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you should make [ONE of] the following finding[s]:

We, the Jury, find beyond a reasonable doubt that _____(person allegedly aided) had committed _____(offense).

_____

FOREMAN

NOTE ON USE

The person allegedly aided should be named if his identity is known.

This verdict form should be used only in conjunction with AMCI 2d 5406-EXP. The last paragraph should be repeated as often as necessary to set out all offenses submitted for the jury's consideration.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used.

AMCI 2d 5407
COMPOUNDING

_____ *(Defendant(s))* [is] [are] **charged with the offense of compounding. To sustain this charge the State must prove beyond a reasonable doubt that _____(defendant(s)):**

[(Solicited) (accepted) (or) (agreed to accept) any pecuniary benefit as consideration for not reporting to law enforcement authorities (the [commission] [or] [suspected commission] of any offense) (or) (information relating to an offense).]

[(Offered) (conferred) (or) (agreed to confer) any pecuniary benefit upon (_____) *(another person)* (another person) as consideration for (_____) *(that other person's)* (that other person's) not reporting to law enforcement authorities (the [commission] [or] [suspected commission] of any offense) (or) (information relating to an offense).]

[To prove the offense of _____ *(offense(s) compounded)* the State must prove beyond a reasonable doubt:

(Insert appropriate elements from instruction on applicable felony and repeat this paragraph for each offense upon which the court is instructing.)]

NOTE ON USE

Where there is a dispute about whether the offense compounded was committed or where the conduct might constitute more than one compounded offense, the last bracketed paragraph defining all compounded offenses at issue should be given, and this instruction should be used in conjunction with AMCI 2d 5407-EXP and 5407-VF. Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5407-VF, AMCI 2d 5407 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

COMMENT

Ark. Code Ann. § 5-54-107.

AMCI 2d 5407-EXP
COMPOUNDING — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____(defendant(s)) guilty of compounding, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5407 and 5407-VF in circumstances described in the Note on Use to AMCI 2d 5407. In other cases use AMCI 2d 8101 and 8301-VF.

AMCI 2d 5407-VF
COMPOUNDING — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____(defendant) is guilty of compounding.

_____

FOREMAN

We, the Jury, find _____(defendant) not guilty.

_____

FOREMAN

If you verdict is guilty, you shall make [ONE of] the following finding[s]:

We, the Jury, find beyond a reasonable doubt that the offense sought **to be concealed was _____(offense).**

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 5407-EXP. The last paragraph should be repeated as often as necessary to set out all offenses submitted for the jury's consideration.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 5408
HINDERING AND COMPOUNDING: DEFENSE EXCLUDED

It is not a defense to a prosecution for [hindering] [or] [compounding] **that the principal offender has not been** [apprehended] [or] [prosecuted] [or] [convicted] [or] [punished].

NOTE ON USE

This instruction should be given if requested by counsel or if the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-108.

AMCI 2d 5409
FIRST DEGREE ESCAPE

_____ *(Defendant(s))* [is] [are] **charged with the offense of first degree escape. To sustain this charge the State must prove beyond a reasonable doubt:**

[That _____*(defendant(s))*, aided by another person actually present, (used) (or) (threatened to use) physical force in escaping from

(custody) (a correctional facility) (a juvenile detention facility) (or) (a youth services program).

(The term "another person" includes a codefendant.)]

[That _____ *(defendant(s))* (used) (or) (threatened to use) a deadly weapon in escaping from (custody) (a correctional facility) (a juvenile detention facility) (or) (a youth services program).]

NOTE ON USE

The alternative language as to the definition of "another person" should be given when codefendants are charged with an escape based on concerted activity. Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-110. First degree escape is a Class A felony if the person was in the custody of the Department of Corrections, the Department of Community Corrections, or a law enforcement agency; otherwise, it is a Class C felony.

AMCI 2d 5410
SECOND DEGREE ESCAPE

_____*(Defendant(s))* [is] [are] **charged with the offense of second degree escape. To sustain this charge the State must prove beyond a reasonable doubt:**

[That _____ *(defendant(s))* (used) (or) (threatened to use) physical force in escaping from custody.]

[That _____ *(defendant(s))*, having been found guilty of _____ *(a felony)*, escaped from custody.]

[That _____ *(defendant(s))* escaped from (a correctional facility) (a juvenile detention facility) (or) (a youth services program).]

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-111. Second degree escape is a Class B felony if the person was in the custody of the Department of Corrections, the Department of Community Corrections, or a law enforcement agency; otherwise, it is a Class D felony.

AMCI 2d 5411
THIRD DEGREE ESCAPE

_____ *(Defendant(s))* [is] [are] charged with the offense of third degree escape. **To sustain this charge the State must prove beyond a reasonable doubt that** _____**(defendant(s))** escaped from custody [which resulted from a lawful arrest].

NOTE ON USE

Definition from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-112. Third degree escape is a Class C felony if the person was in the custody of the Department of Corrections, the Department of Community Corrections, or a law enforcement agency; otherwise, it is a Class A misdemeanor.

AMCI 2d 5412
PERMITTING ESCAPE IN THE FIRST DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of permitting escape in the first degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____**(defendant(s))** [was] [were] [a] **public servant** [s] **responsible for the supervision of persons detained in** [a correctional facility] [or] [custody];

Second: That _____**(defendant(s)) knowingly permitted the escape of** _____**(escapee); and**

Third: That _____**(defendant(s)) knew that** _____**(escapee) was detained in** [a correctional facility] [or] [custody] **pursuant to** [an arrest for] [or] [a charge of] [or] [a conviction of] *(a felony).*

Definition

"Knowingly." — A person acts knowingly with respect to the results of his conduct when he is aware that it is practically certain that his conduct will cause such results.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-113. "Knowingly" is defined in § 5-2-202.

Permitting escape in the first degree is a Class C felony.

AMCI 2d 5413
PERMITTING ESCAPE IN THE SECOND DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of permitting escape in the second degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____**(defendant(s))** [was] [were] [a] **public servant** [s] **responsible for the supervision of persons detained in** [a correctional facility] [or] [custody]; **and**

Second: That _____***(defendant(s)) recklessly permitted the escape*** **of** _____**(escapee) from** [a correctional facility] [or] [custody].

Definition

"Recklessly." — A person acts recklessly with respect to the results of his conduct when he consciously disregards a substantial and unjustifiable risk that the results will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in that situation.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-114. "Recklessly" is defined in Ark. Code Ann. § 5-2-202. Permitting escape in the second degree is a Class A misdemeanor.

This offense, Ark. Code Ann. § 5-54-114, was repealed by Act 1994 of 2005, section 532, effective August 12, 2005. See AMCI 2d 5414, Permitting Escape or Unauthorized Departure (Second Degree).

AMCI 2d 5414
PERMITTING ESCAPE OR UNAUTHORIZED DEPARTURE (SECOND DEGREE)

_____*(Defendant)* is charged with the offense of permitting escape or unauthorized departure in the second degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____*(defendant)* was a public servant; and

Second: That _____*(defendant)* recklessly permitted a person to escape or make an unauthorized departure from [a correctional facility] [custody] [the Arkansas State Hospital] [a juvenile detention facility] [or] [a youth services program].

Definitions

For purposes of this instruction, a "public servant" is one responsible for the supervision of persons in (a) a correctional facility, (b) custody, or (c) the Arkansas State Hospital or a juvenile detention facility or youth services program pursuant to a court order or petition.

"Recklessly." A person acts recklessly with respect to the results of his conduct when he consciously disregards a substantial and unjustifiable risk that the results will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in that situation.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Ark. Code Ann. § 5-54-115 states that a public servant is one who is responsible for the supervision of persons in a correctional facility, in custody, or pursuant to a court order or petition in the Arkansas State Hospital or a juvenile detention facility or youth services program. If a factual issue exists as to whether the defendant is a public servant, then, if necessary, in lieu of the definition of "public servant," this instruction may be modified to permit the jury to make such a determination.

COMMENT

Ark. Code Ann. § 5-54-115. "Recklessly" is defined in section 5-2-202.

Permitting escape or unauthorized departure is a Class A misdemeanor.

AMCI 2d 5415
AIDING AN UNAUTHORIZED DEPARTURE

_____*(Defendant(s))* [is] [are] **charged with the offense of aiding an unauthorized departure. To sustain this charge the State must prove beyond a reasonable doubt that** _____*(defendant(s))* [not being (an) inmates(s) in a (youth services program) (youth services facility) (or) (the Arkansas State Hospital)] **knowingly aided** _____ *(another person)* **in making or attempting to make an unauthorized departure from** [a juvenile detention facility] [a youth services program] [or] [the Arkansas State Hospital].

Definition

"Knowingly" — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury. The bracketed phrase beginning "not being (an) inmate(s)" should be given if the status of the person charged is in issue.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5415-VF, AMCI 2d 5415 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5415-VF, AMCI 2d 5415 should be used in conjunction with 5415-EXP and 5415-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-54-116. "Knowingly" is defined in § 5-2-202.

AMCI 2d 5415-EXP
AIDING AN UNAUTHORIZED DEPARTURE — STAGE ONE
VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____(defendant(s)) guilty of aiding an unauthorized departure, you will so indicate on the verdict form provided you. You will also find whether [he] [they] **used physical force or used or threatened to use a deadly weapon. You are instructed that:**

"Physical force" means any [bodily impact] [or] [restraint] [or] [confinement] [or] [the threat of (bodily impact) (or) (restraint) (or) (confinement)].

"Deadly weapon" means:

(a) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

(b) anything that in the manner of its use or intended use is capable of causing death or serious physical injury.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5415 and 5415-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out at AMCI 2d 5415-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 5415-VF
AIDING AN UNAUTHORIZED DEPARTURE — STAGE ONE
VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____(defendant) is guilty of aiding an unauthorized departure.

_____

FOREMAN

We, the Jury, find _____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you will complete the following:

[(1) Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* used physical force?

YES _____

NO _____

_____

FOREMAN]

[(2) Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* used or threatened to use a deadly weapon?

YES _____

NO _____

_____

FOREMAN]

NOTE ON USE

The court should read the applicable portions of this verdict form to the jury.

This verdict form should be used only in conjunction with AMCI 2d 5415-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 5416
ASSISTING IN OR FURNISHING IMPLEMENT FOR ESCAPE

_____ *(Defendant(s))* [is] [are] **charged with the offense of assisting in or furnishing an implement for escape. To sustain this charge the State must prove beyond a reasonable doubt that, with the purpose of facilitating an escape,** _____ *(defendant(s))*:

[introduced an implement for escape into a correctional facility] [or]

[provided an inmate in a correctional facility with an implement for escape] [or]

[provided a person in custody with an implement for escape] [or]

[provided transportation of any kind that was used in the commission or furtherance of an escape from a correctional facility] [or]

[furnished food, clothing, finances or other aid to a person who escaped from a correctional facility] [or]

[provided shelter or housing to a person who escaped from a correctional facility].

Definition

"Purpose." — A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5416-VF, AMCI 2d 5416 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5416-VF, AMCI 2d 5416 should be used in conjunction with 5416-EXP and 5416-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark Code Ann. § 5-54-117. "Purpose" is defined in § 5-2-202. Furnishing an implement of escape is a Class B felony if the implement is a deadly weapon; otherwise, it is a Class C felony.

AMCI 2d 5416-EXP
ASSISTING IN OR FURNISHING IMPLEMENT FOR ESCAPE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of assisting in or furnishing an implement for escape, you will so indicate on the verdict form provided you. You will also find whether *[he] [they]* furnished a deadly weapon.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5416 and 5416-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 5416-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

The definition of "deadly weapon" set out in AMCI 2d 5415-EXP should be given in conjunction with this instruction.

AMCI 2d 5416-VF
ASSISTING IN OR FURNISHING IMPLEMENT FOR ESCAPE — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of assisting in or furnishing an implement for escape.

_____

FOREMAN

We, the Jury, find _____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* furnished a deadly weapon?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 5416-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 5417
FURNISHING IMPLEMENT FOR UNAUTHORIZED DEPARTURE

_____*(Defendant(s))* [is] [are] **charged with the offense of furnishing an implement for unauthorized departure. To sustain this charge the State must prove beyond a reasonable doubt that, with the purpose of facilitating an unauthorized departure,** _____ *(defendant(s))*

[introduced an implement for unauthorized departure into (the Arkansas State Hospital) (a youth services program)]

[provided a person detained in (the Arkansas State Hospital) (a youth services program) with an implement for unauthorized departure].

Definition

"Purpose" — A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5417-VF, AMCI 2d 5417 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5417-VF, AMCI 2d 5417 should be used in conjunction with 5417-EXP and 5417-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-54-118. "Purpose" is defined in § 5-2-202.

AMCI 2d 5417-EXP
FURNISHING IMPLEMENT FOR UNAUTHORIZED DEPARTURE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____(defendant(s)) guilty of furnishing an implement for unauthorized departure, you will so indicate on the verdict form provided for you. You will also find whether [he] [they] **furnished a deadly weapon.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5417 and 5417-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 5417-VF. In other cases use AMCI 2d 8101 and 8301-VF.

The definition of "deadly weapon" set out in AMCI 2d 5415-EXP should be given in conjunction with this instruction.

AMCI 2d 5417-VF
FURNISHING IMPLEMENT FOR UNAUTHORIZED DEPARTURE — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____(defendant) is guilty of furnishing an implement for unauthorized departure.

_____

FOREMAN

We, the Jury, find _____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* furnished a deadly weapon?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 5417-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 5418
FURNISHING PROHIBITED ARTICLES

_____*(Defendant(s))* [is] [are] **charged with the offense of furnishing prohibited articles. To sustain this charge the State must prove beyond a reasonable doubt that** _____*(defendant(s))* **knowingly:**

[Introduced

(an intoxicating beverage) (_____ *(controlled substance)* [not prescribed by a physician for the benefit of the person to whom it was delivered])

(a weapon) (anything furnished without the authorization of a person charged with the duty of maintaining the safety or security of the institution or any person confined there)

into (a correctional facility) (or) (the Arkansas State Hospital) (or) (a youth services program.)]

[Provided a person confined in (a correctional facility) (or) (the Arkansas State Hospital) (or) (a youth services program) with

(an intoxicating beverage) (_____ *(controlled substance)* [not prescribed by a physician for the benefit of the person to whom it was delivered])

(a weapon) (anything furnished without the authorization of a person charged with the duty of maintaining the safety or security of the institution or any person confined there.)]

Definition

"Knowingly" — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

Definitions from AMCI 2d 5401 should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-119. "Knowingly" is defined in § 5-2-202.

"Sacramental wine" furnished by a "religious official" pursuant to rules promulgated by the Department of Correction is not an "intoxicating beverage." Ark. Code Ann. § 5-54-119(b).

Furnishing prohibited articles may be a Class B or D felony or a Class A misdemeanor, depending upon the article furnished. No separate punishment

instruction has been prepared because the nature of the article allegedly furnished will rarely be an issue of fact. If it is, instructions similar to AMCI 2d 5417-EXP and 5417-VF should be submitted.

AMCI 2D 5418.1
POSSESSION OR USE OF WEAPONS BY INCARCERATED PERSONS

_____ *(Defendant(s))* [is] [are] charged with the offense of possession or use of [a] weapon[s] by [an] incarcerated person[s]. To sustain this charge the State must prove beyond a reasonable doubt that _____ (defendant(s)), while incarcerated in [the Arkansas Department of Correction] [the Arkansas Department of Community Punishment] [a (county) (municipal) jail or detention facility], and without approval of the custodial authority, [used] [or] [possessed] [or] [made] [or] [repaired] [or] [sold] [or] [otherwise dealt in] any weapon.

Definitions

"Weapon" includes a bomb, firearm, knife, or other implement for the infliction of serious physical injury or death and which serves no common lawful purpose.

"Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

NOTE ON USE

Definitions should be given when requested by counsel or when the court believes it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-131.

Possession or use of weapons by incarcerated persons is a Class D felony.

AMCI 2d 5418.2
POSSESSION OF PROHIBITED ARTICLE

_____ *(Defendant)* is charged with the offense of possession of prohibited article. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(Defendant)* was an inmate of a correctional facility or in the custody of a correctional facility; **and**

Second: That _____ *(Defendant)* knowingly possessed (a cellular telephone or other communication device, or a component of a cellular telephone or other communication device) (a controlled substance).

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

COMMENT

Ark. Code Ann. § 5-54-119 (c). This offense is a Class B felony. "Knowingly" is defined in Ark. Code Ann. § 5-2-202 (2).

AMCI 2d 5418.3
USE OF PROHIBITED ARTICLE

_____ *(Defendant)* **is charged with the offense of use of prohibited article. To sustain this charge, the State must prove the following things beyond a reasonable doubt:**

First: _____ *(Defendant)* [committed] [attempted to commit] [solicited the commission of] [or] [conspired to commit] [an escape from the custody of a correctional facility] [engaging in a continuing criminal enterprise] [*insert name of the applicable violent felony defined in Ark. Code Ann. § 5-4-501 (d)(2)*].

To prove this offense, the State must prove beyond a reasonable doubt that:

[Insert appropriate elements from instructions on (escape from the custody of a correctional facility) (engaging in a continuing criminal enterprise (Ark. Code Ann. § 5-64-405)) (violent felony (§ 5-4-501 (d)(2))].

Second: the State must also prove beyond a reasonable doubt that

_____ *(Defendant)* was an inmate of a correctional facility or in the custody of a correctional facility; **and**

Third: that _____ *(defendant)* knowingly used a cellular telephone or other communication device to commit _____ *(insert name of offense set out in the First Element).*

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

A charge of use of prohibited article committed in the course of one of the offenses specified in Ark. Code Ann. § 5-54-119(d) [escape, engaging in a continuing criminal enterprise (§ 5-64-405), violent felony (§ 5-4-501(d)(2))] will require proof of that offense.

If the defendant is charged with one of the inchoate offenses specified in Ark. Code Ann. § 5-54-119(d), instructions from AMCI 2d Chapter 5 should be given in the First Element.

Use this instruction in conjunction with AMCI 2d 8101 and 8301-VF.

COMMENT

Ark. Code Ann. § 5-54-119(d). This offense is a Class A felony. "Knowingly" is defined in Ark. Code Ann. § 5-2-202(2). The inchoate offenses of attempt, solicitation, and conspiracy are found in Ark. Code Ann. § 5-3-101.

AMCI 2d 5418.4
DELIVERY OF PROHIBITED ARTICLE

(Defendant) **is charged with the offense of delivery of prohibited article. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That *(Defendant)* was an inmate of a correctional facility or in the custody of a correctional facility; **and**

Second: That *(Defendant)* knowingly delivered a controlled substance(.)

[; and

Third: That the use of the controlled substance caused (the death of) (serious bodily injury to) another person].

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

If there is an issue whether the delivery of a controlled substance through its use caused the death or serious bodily injury to another person, then the third element should be used.

COMMENT

Ark. Code Ann. § 5-54-119 (e). "Knowingly" is defined in Ark. Code Ann. § 5-2-202 (2).

Delivery of a prohibited article is a Class B felony unless the controlled substance through its use causes death or serious bodily injury, in which case, it is a Class A felony. A person cannot be tried for this offense if he or she is charged for a possession or delivery offense under the Uniform Controlled Substances Act arising out of the same set of facts.

AMCI 2d 5419
ABSCONDING

_____ *(Defendant)* **is charged with the offense of absconding. To sustain this charge the State must prove beyond a reasonable doubt that he knowingly:**

[left a designated residence while under house arrest ordered by a court as a condition of his release after a criminal charge.]

[or]

[left a designated area while wearing an electronic monitoring device ordered by a court as a condition of his release after a criminal charge.]

[or]

[failed to abide by the terms of the (sentence) (or) (conditions imposed concerning release pending bed space) by not reporting to a designated place or at a designated time in order to submit to the custody of the Department of (Correction) (or) (Community Correction) to serve the period of incarceration ordered by the court.]

COMMENT

Ark. Code Ann. § 5-54-131. Absconding is a Class D felony. Ark. Code Ann. § 16-90-122 is referenced in the statute with respect to conditions for release pending bed space.

AMCI 2d 5420
FAILURE TO APPEAR

_____ *(Defendant(s))* [is] [are] **charged with the offense of failure to appear. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: [That _____ *(defendant(s))* (was) (were) (cited) (summoned) **as** (an) **accused person (s);]**

[or]

[That _____ *(defendant(s))* (was) (were) **lawfully set at liberty upon condition that** (he) (they) **appear at a specified time, place, and court;]**

And second: That [he] [they] **failed to appear without a reasonable excuse.**

COMMENT

Ark. Code Ann. § 5-54-120. *See also* Ark. R. Crim. P. 5 (citation), 6 (summons), and 8–9 (release generally).

Failure to appear is a: (1) Class C felony if the required appearance was in regard to a pending charge or disposition of a felony charge either before or after a determination of guilt of the felony charge; (2) Class D felony if the required appearance was in regard to an order to appear issued before a revocation hearing under § 16-93-307 and the defendant was placed on probation or received a suspended sentence for a felony offense.

Failure to appear is a: (1) Class A misdemeanor if the required appearance was in regard to a pending charge or disposition of a Class A misdemeanor charge; (2) Class B misdemeanor if the required appearance was in regard to a pending charge or disposition of a Class B or a Class C misdemeanor charge; (3) Unclassified misdemeanor with the same penalty as the unclassified misdemeanor in the pending charge or disposition if the required appearance was in regard to a pending charge or disposition of an unclassified misdemeanor; and (4) Class C misdemeanor if the required appearance was in regard to a pending charge or disposition of a violation.

"Pending charge" means a charge that results from an arrest or issuance of a citation or criminal summons, after the filing of a criminal information or indictment and that has not been resolved by acquittal, conviction, dismissal, or nolle prosequi."

(Text continued on page 54-45)

AMCI 2d 5421
TAMPERING WITH PUBLIC RECORD

_____ *(Defendant(s))* [is] [are] **charged with the offense of tampering with a public record. To sustain this charge the State must prove beyond a reasonable doubt that, with the purpose of impairing the** [verity] [or] [legibility] [or] [availability] **of a public record,** [defendant] **knowingly:**

[(made a false entry in) (or) (falsely altered) a public record] [or]

[(erased) (or) (obliterated) (or) (removed) (or) (destroyed) (or) (concealed) a public record].

Definitions

"Public record" includes all official books, papers, exhibits or records of any type required by law to be created by or received and retained in any government office or agency, affording notice or information to the public or constituting a memorial of an act or transaction of a public offic or public servant.

NOTE ON USE

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5421–VF, AMCI 2d 5421 should be used in conjunction with AMCI 2d 8101 and 8301–VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from chapter 91 and a verdict form from chapter 93, both geared to the grade of the offence charge in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5421–VF, AMCI 2d 5421 should be used in conjunction with AMCI 2d 5421–EXP and 5421–VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-54-121.

"Purposely" and "knowingly" are defined in Ark. Code Ann. § 5-2-201(1) and (2). "Public record" is defined in Ark. Code Ann. § 5-54-101(11).

Tampering with a public record is a Class D felony if the record is a court record and the defendant broke into a building or structure with the intent of tampering with a court record located in the building or structure. Tampering with a public record is a Class C felony if the public record is a court record. Otherwise, tampering with a public record is a Class D felony.

AMCI 2d 5421-EXP
TAMPERING WITH PUBLIC RECORD—STAGE ONE
VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find (defendant) **guilty of tampering with public records, you will so indicate on the verdict form provided to you. You will also make findings about the circumstances of the offense, as directed on the form.**

If you reach a verdict of not guilty, you will indicate this on the verdict form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5421 and 5421–VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in 5421–VF. In other cases, use AMCI 2d 5421 in conjunction with AMCI 2d 8101 and 8301–VF.

AMCI 2d 5421-VF
TAMPERING WITH PUBLIC RECORD—STAGE ONE
VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that (defendant) is guilty of tampering with a public record.

_____

FOREMAN

We, the Jury, find (defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Question 1: Do you, the Jury, find beyond a reasonable doubt that the public record with which the defendant tampered was a court record?

YES _____

NO _____

_____

FOREMAN

If your verdict is guilty, and the answer to Question 1 is YES, you shall complete the following:

Question 2: Do you, the Jury, find beyond a reasonable doubt that the defendant broke into any [building] [or] [structure] with the intent of tampering with a court record located therein?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

The court should read the applicable portions of this verdict form to the jury.

This verdict form should be used only in conjunction with AMCI 2d 5421-EXP.

If a verdict of guilty is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two. If the jury answers both questions on AMCI 2d 5421–VF in the affirmative, the offense is a Class B felony. If the jury answers Question 1 in the affirmative and Questions 2 in the negative, the offense is a Class C felony. If the jury answers Question 1 in the negative, the offense is a Class D felony.

AMCI 2d 5422
FLEEING

_____ *(Defendant(s))* [is] [are] **charged with the offense of fleeing. To sustain this charge the State must prove beyond a reasonable doubt that _____ (defendant(s)), knowing that [his] [their] immediate [arrest] [or] [detention] was being attempted by a duly authorized law enforcement officer, fled from the officer [on foot] [or] [by means of any (vehicle) (or) (conveyance).]**

NOTE ON USE

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5422-VF, AMCI 2d 5422 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 5422-VF, AMCI 2d 5422 should be used in conjunction with 5422-EXP and 5422-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

Under Ark. Code Ann. § 5-54-125(b), "[f]leeing is a separate offense and shall not be considered a lesser included offense or component offense with relation to other offenses which may occur simultaneously with the fleeing."

COMMENT

Ark. Code Ann. § 5-54-125.

Fleeing may be a Class A, B, or C misdemeanor or a Class D or C felony.

AMCI 2d 5422-EXP
FLEEING—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ (defendant(s)) guilty of fleeing, you will so indicate on the verdict form provided you. You will also make [a] finding[s] about the circumstances of the offense as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the verdict form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5422-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out therein. In other cases use AMCI 2d 5422 in conjunction with AMCI 2d 8101 and 8301-VF.

AMCI 2d 5422-VF
FLEEING—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of fleeing.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)*:

(1) Caused serious physical injury to any person as a direct result of fleeing in a vehicle or conveyance.

_____
FOREMAN

(2) Fled by means of a vehicle or conveyance and, under circumstances manifesting extreme indifference to the value of human life, purposely operated the vehicle or conveyance in a manner that created a substantial danger of death or serious physical injury to any person.

_____
FOREMAN

(3) Fled on foot, causing serious physical injury to any person as a direct result.

_____
FOREMAN

(4) Fled by means of any vehicle or conveyance.

_____
FOREMAN

(5) Fled on foot, causing property damage as a direct result.

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 5422-EXP. If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

Where the defendant has been charged with having been previously convicted of fleeing on foot within the past year, the issue of the previous conviction should not be addressed until after the jury has returned a verdict of guilty.

COMMENT

Definitions of "physical injury" and "serious physical injury" are found at Ark. Code Ann. § 5-1-102.

Ark. Code Ann. § 5-54-125(d) provides that a person convicted of fleeing by means of any vehicle or conveyance shall serve a minimum of two days in jail, and the court shall instruct Driver's Services to suspend or revoke defendant's driver's license for at least six months but not more than one year.

AMCI 2d 5423
FILING FALSE REPORT WITH A LAW ENFORCEMENT AGENCY

_____ *(Defendant(s))* [is] [are] **charged with the offense of filing a false report with a law enforcement agency. To sustain this charge the State must prove the following beyond a reasonable doubt:**

THAT _____ *(defendant)* **filed a report with** [a law enforcement agency] [or] [a prosecuting attorney's office] **of alleged criminal wrongdoing on the part of another person knowing that the report was false.**

Definitions

"Report" means any communication, either written or oral, sworn or unsworn.

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5423-EXP and 5423-VF.

COMMENT

Ark. Code Ann. § 5-54-122.

Filing a false report is a Class D felony if: the alleged criminal wrongdoing is a capital offense, Class Y felony, Class A felony, or Class B felony; the law enforcement agency or prosecuting attorney's office to whom the false report is made has expended in excess of $500 in order to investigate the false report, including the costs of labor; physical injury results to any person as a result of the false report; the false report is made in an effort by the person filing the false report to conceal his or her own criminal activity; or the false report results in another person being arrested. Otherwise, filing a false report is a Class A misdemeanor.

AMCI 2d 5423-EXP
FILING FALSE REPORT WITH LAW ENFORCEMENT AGENCY—MULTIPLE POSSIBLE VERDICTS

If you find _____*(defendant)* guilty of filing a false report with a law enforcement agency, you will so indicate on the verdict form provided to you. You may also be asked to make a finding about the circumstances of the offense as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5423 and 5423-VF.

AMCI 2d 5423-VF
FILING FALSE REPORT WITH LAW ENFORCEMENT AGENCY—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of filing a false report with a law enforcement agency.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the [law enforcement agency] [or] [prosecuting attorney's office] to whom the false report was made expended in excess of $500 in order to investigate the false report, including the costs of labor?

YES _____

NO _____

_____
FOREMAN

Do you, the Jury, find beyond a reasonable doubt that physical injury resulted to any person as a result of the false report?

YES _____

NO _____

_____
FOREMAN

Do you, the Jury, find beyond a reasonable doubt that the false report was made in an effort by the _____ *(defendant)* to conceal his or her own criminal activity?

YES _____

NO _____

_____
FOREMAN

Do you, the Jury, find beyond a reasonable doubt that the false report resulted in another person being arrested?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5423 and 5423-EXP.

Chapter 55

TERRORISM

5501.	Definitions for Chapter 55
5502.	Soliciting Material Support For Terrorism
5503.	Providing Material Support For Terrorism
5504.	Making A Terrorist Threat
5505.	Falsely Making A Terrorist Threat
5506.	Terrorism
5506-EXP.	Terrorism — Stage One Verdict Explanation
5506-VF.	Terrorism — Stage One Verdict Form — Enhancement For Injury To Certain Persons
5507.	Hindering Prosecution Of Terrorism
5507-EXP.	Hindering Prosecution Of Terrorism — Stage One Verdict Explanation — Multiple Possible Verdicts
5507-VF.	Hindering Prosecution Of Terrorism — Stage One Verdict Form — Multiple Possible Verdicts
5508.	Exposing Public To Toxic Biological, Chemical, Or Radioactive Substances
5509.	Use Of A Hoax Substance

AMCI 2d 5501

DEFINITIONS FOR CHAPTER 55

As used in this Chapter, the term "act of terrorism" has seven alternative meanings as follows:

(A)

"Act of terrorism" means any act that causes or creates a risk of death or serious physical injury to five (5) or more persons.

"Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

(B)

"Act of terrorism" means any act that disables or destroys the usefulness or operation of any communications system.

"Communications system" means any works, property, or material of any radio, telegraph, telephone, microwave, cable station, or system.

(C)

"Act of terrorism" means any act or any series of two (2) or more acts committed in furtherance of a single intention, scheme, or design that disables or destroys the usefulness or operation of a computer network, computers, computer programs, or data used by any industry, by any class of business, or by five (5) or more businesses or by the federal government, state government, any unit of local government, a public utility, a manufacturer of pharmaceuticals, a national defense contractor, or a manufacturer of chemical or biological products used in connection with agricultural production.

"Computer" means a device that accepts, processes, stores, retrieves, or outputs data. "Computer" includes, but is not limited to, auxiliary storage and telecommunications devices.

"Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through communication facilities.

"Computer program" means a series of coded instruction or statements in a form acceptable to a computer that causes the computer to process data and supply the results of data processing;

"Data" means representations of information, knowledge, facts, concepts, or instructions, including program documentation, which are prepared in a formalized manner and are stored or processed in or transmitted by a computer. Data may be stored in any form including, but not limited to, magnetic or optical storage media, punch cards, or data stored internally in the memory of a computer.

(D)

"Act of terrorism" means any act that disables or causes substantial damage to or destruction of any structure or facility used in or in connection with ground, air, or water transportation, the production or distribution of electricity, gas, oil, or other fuel, the treatment of sewage or the treatment or distribution of water, or controlling the flow of any body of water.

(E)

"Act of terrorism" means any act that causes substantial damage to or destruction of livestock or crops or a series of two (2) or more acts committed in furtherance of a single intention, scheme, or design which, in the aggregate, causes substantial damage to or destruction of livestock or crops.

"Livestock" means animals bred or raised for human consumption.

(F)

"Act of terrorism" means any act that causes substantial damage to or destruction of any hospital, or any building or facility used by the federal government, state government, any unit of local government, by a national defense contractor, a public utility, a manufacturer of chemical or biological products used in or in connection with agricultural production or the storage or processing of agricultural products or the preparation of agricultural products for food or food products intended for resale or for feed for livestock.

"Agricultural production" means the breeding and growing of livestock and crops.

"Agricultural products" means crops and livestock.

"Biological products used in agriculture" means, but is not limited to, seeds, plants, and DNA of plants or animals altered for use in crop or livestock breeding or production or which are sold, intended, designed, or produced for use in crop production.

"Livestock" means animals bred or raised for human consumption.

(G)

"Act of terrorism" means any act that causes five hundred thousand dollars ($500,000) damage to any building or set of buildings.

COMMENT

Ark. Code Ann. § 5-54-201 contains seven definitions of "act of terrorism."

AMCI 2d 5502

SOLICITING MATERIAL SUPPORT FOR TERRORISM

_____ *(Defendant)* is charged with the offense of soliciting material support for terrorism. To sustain this charge the State must prove the following things beyond a reasonable doubt:

> That _____ *(defendant)* knowingly (raised) (solicited) (or) (collected) material support or resources knowing that the material support or resources would be used, in whole or in part, to (plan) (prepare) (carry out) (or) (avoid apprehension for committing) (the offense of terrorism) (or) (the offense of causing a catastrophe).

OR

> That _____ *(defendant)* knowingly (solicited) (or) (collected) material support or resources knowing that the material support or resources would be used by _____ *(organization designated under § 8 U.S.C. 1189, as the list of organizations existed March 1, 2003).*

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result;

"Material support or resources." — means currency or other financial securities, financial services, lodging, training, safe house, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, any other kind of physical assets or intangible property, and expert services or expert assistance.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury. If commission of the offense of terrorism or causing a catastrophe is an issue, the appropriate instruction defining the underlying offense should also be given. Terrorism is defined in AMCI 2d 5506, and causing a catastrophe is defined in AMCI 2d 3805.

It is not an element of the offense that the defendant knows that an organization has been designated under § 8 U.S.C. 1189 as a foreign terrorist organization. *See* Ark. Code Ann. § 5-54-202(a)(1)(B).

COMMENT

Ark. Code Ann. § 5-54-202(a). "Material support or resources" is defined in Ark. Code Ann. § 5-54-201(12). "Terrorism" is defined in Ark. Code Ann. § 5-54-205. "Causing a catastrophe" is defined in Ark. Code Ann. § 5-38-202.

Soliciting material support for terrorism is a Class Y felony.

AMCI 2d 5503

PROVIDING MATERIAL SUPPORT FOR TERRORISM

_____ *(Defendant)* is charged with the offense of providing material support for terrorism. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant)* knowingly provided material support or resources to a person knowing that the person would use that support or those resources in whole or in part [to (plan) (prepare) (carry out) (facilitate) (or) (avoid apprehension for committing) an act of terrorism] [or] [to cause a catastrophe].

Definitions

"Catastrophe." — means (serious physical injury or death to five or more persons) (or) (substantial damage to five or more occupiable structures) (or) (property loss in excess of $500,000) caused by (explosion) (fire) (flood) (avalanche) (collapse of a building) (distribution of poison) (distribution of radioactive material) (distribution of bacteria) (distribution of a virus) (or) (other dangerous or difficult to confine force or substance).

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Material support or resources." — means currency or other financial securities, financial services, lodging, training, safe house, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, any other kind of physical assets or intangible property, and expert services or expert assistance.

"Occupiable structure." — means a vehicle, building, or other structure (where any person lives or carries on a business or other calling) (where people assemble for purposes of business, government, education, religion, entertainment, or public transportation) (which is customarily used for overnight accommodation of persons whether or not a person is actually present). (Each unit of a structure divided into separately occupied units is itself an occupiable structure.)

"Person." — means an individual, public or private corporation, government, partnership, or unincorporated association. "Person" includes, without limitation, any charitable organization, whether incorporated or unincorporated, any professional fund raiser, professional solicitor, limited liability company, association, joint stock company, association, trust,

trustee, or any group people formally or informally affiliated or associated for a common purpose, and any officer, director, partner, member, or agent of any person.

"Serious physical injury." — means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

"Act of terrorism" is defined in AMCI 2d 5501.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-202(b). "Causing a catastrophe" is defined in Ark. Code Ann. § 5-38-202. "Occupiable structure" is defined in Ark. Code Ann. § 5-38-101. "Serious physical injury" is defined in Ark. Code Ann. § 5-1-102. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. "Act of terrorism" is defined in Ark. Code Ann. § 5-54-201.

Providing material support for terrorism is a Class Y felony.

AMCI 2d 5504

MAKING A TERRORIST THREAT

_____ *(Defendant)* is charged with the offense of making a terrorist threat. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* in any manner knowingly (threatened to commit) (or) (caused to be committed) a terrorist act and thereby caused a reasonable expectation or fear of the imminent commission of (that terrorist act) (or) (of another terrorist act); and

Second: That _____ *(defendant)* did so with the purpose to (intimidate or coerce a civilian population) (or) (influence the policy of a government or a unit of government by intimidation or coercion).

[It is not a defense to a prosecution for making a terrorist threat that at the time _____ *(defendant)* made the terrorist threat, (he) (she) did not know that it was impossible to carry out the threat.]

[It is not a defense to a prosecution for making a terrorist threat that the threat was not made to a person who was a subject or intended victim of the threatened act.]

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-203. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. "Act of terrorism" is defined in Ark. Code Ann. § 5-54-201.

Providing material support for terrorism is a Class A felony.

AMCI 2d 5505

FALSELY MAKING A TERRORIST THREAT

_____ *(Defendant)* is charged with the offense of falsely making a terrorist threat. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* knowingly [made a threat to (commit) (or) (cause to be committed) a terrorist act] [or] [created the impression or belief that (a terrorist act was about to be) (or) (had been) committed].

OR

First: That _____ *(defendant)* in any manner knowingly made a threat (to commit) (or) (cause to be committed) a catastrophe.

AND

Second: That _____ *(defendant)* knew the threat was false.

Definitions

"Catastrophe." — means (serious physical injury or death to five or more persons) (or) (substantial damage to five or more occupiable structures) (or) (property loss in excess of $500,000) caused by (explosion) (fire) (flood) (avalanche) (collapse of a building) (distribution of poison) (distribution of radioactive material) (distribution of bacteria) (distribution of a virus) (or) (other dangerous or difficult to confine force or substance).

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result;

"Occupiable structure." — means a vehicle, building, or other structure (where any person lives or carries on a business or other calling) (where people assemble for purposes of business, government, education, religion, entertainment, or public transportation) (which is customarily used for overnight accommodation of persons whether or not a person is actually present). (Each unit of a structure divided into separately occupied units is itself an occupiable structure.)

"Serious physical injury." — means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-204. "Causing a catastrophe" is defined in Ark. Code Ann. § 5-38-202. "Occupiable structure" is defined in Ark. Code Ann. § 5-38-101. "Serious physical injury" is defined in Ark. Code Ann. § 5-1-102. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. "Act of terrorism" is defined in Ark. Code Ann. § 5-54-201.

Falsely making a terrorist threat is a Class B felony.

AMCI 2d 5506

TERRORISM

_____ *(Defendant)* is charged with the offense of terrorism. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* knowingly committed an act of terrorism within this state.

OR

First: That _____ *(defendant)* knowingly committed an act of terrorism while outside this state that (took effect within this state) (or) (produced substantial detrimental effects within this state).

AND

Second: That _____ *(defendant)* did so with the intent to (intimidate or coerce a civilian population) (or) (influence the policy of a unit of government using intimidation or coercion) (or) (affect the conduct of a unit or level of government by intimidation or coercion) (or) (retaliate against a civilian population or unit of government for a policy or conduct).

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Act of terrorism." — is defined in AMCI 2d 5501.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-205. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. "Act of terrorism" is defined in Ark. Code Ann. § 5-54-201. Terrorism is a Class Y felony.

AMCI 2d 5506-EXP

TERRORISM
STAGE ONE VERDICT EXPLANATION

The State has alleged that _____ *(defendant's)* acts caused serious physical injury to a (law enforcement officer) (or) (fire fighter) (or) (emergency service technician) providing emergency assistance at the scene of the alleged act of terrorism.

"Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

If you find _____ *(defendant)* guilty of terrorism, you will so indicate on the verdict form provided to you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5506 and 5506-VF where the defendant is charged with committing an act of terrorism that causes serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism.

COMMENT

Terrorism is subject to an enhanced sentence of 10 years if the act of terrorism causes serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism. Ark. Code Ann. § 5-54-206.

AMCI 2d 5506-VF

TERRORISM — STAGE ONE VERDICT FORM — ENHANCEMENT FOR INJURY TO CERTAIN PERSONS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of terrorism.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant's)* acts caused serious physical injury to a (law enforcement officer) (or) (fire fighter) (or) (emergency service technician) providing emergency assistance at the scene of the alleged act of terrorism.

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5506 and 8205-EXP where the defendant is charged with committing terrorism that causes serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism. If a verdict of guilty is returned and the question is answered in the affirmative, AMCI 2d 9101 and 9207 should be used in Stage Two.

COMMENT

Terrorism is subject to an enhanced sentence of 10 years if the act of terrorism causes serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism. Ark. Code Ann. § 5-54-206.

AMCI 2d 5507

HINDERING PROSECUTION OF TERRORISM

_____ *(Defendant)* is charged with the offense of hindering prosecution of terrorism. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* rendered criminal assistance to _____ *(person whose prosecution was allegedly hindered);* and

Second: That _____ *(person whose prosecution was allegedly hindered)* had committed the offense of (terrorism) (or) (causing a catastrophe); and

Third: That _____ *(defendant)* knew that _____ *(person whose prosecution was allegedly hindered)* had (engaged in an act of terrorism) (or) (caused a catastrophe).

Definitions

"Catastrophe." — means (serious physical injury or death to five or more persons) (or) (substantial damage to five or more occupiable structures) (or) (property loss in excess of $500,000) caused by (explosion) (fire) (flood) (avalanche) (collapse of a building) (distribution of poison) (distribution of radioactive material) (distribution of bacteria) (distribution of a virus) (or) (other dangerous or difficult to confine force or substance).

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result;

"Occupiable structure." — means a vehicle, building, or other structure (where any person lives or carries on a business or other calling) (where people assemble for purposes of business, government, education, religion, entertainment, or public transportation) (which is customarily used for overnight accommodation of persons whether or not a person is actually present). (Each unit of a structure divided into separately occupied units is itself an occupiable structure.)

"Person." — means an individual, public or private corporation, government, partnership, or unincorporated association. "Person" includes, without limitation, any charitable organization, whether incorporated or unincorporated, any professional fund raiser, professional solicitor, limited

liability company, association, joint stock company, association, trust, trustee, or any group people formally or informally affiliated or associated for a common purpose, and any officer, director, partner, member, or agent of any person.

"Purposely." — A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Render criminal assistance." — means to do any of the following with the purpose to prevent, hinder, or delay the discovery or apprehension of, a person who he or she knows or believes has committed the offense of [offense defined in Title 5, Subchapter 54] or is being sought by law enforcement officials for the commission of the offense of [offense defined in Title 5, Subchapter 54], or with the purpose to assist a person in profiting or benefiting from the commission of the offense [offense defined in Title 5, Subchapter 54]:

(A) Harbor or conceal the person;

(B) Warn the person of impending discovery or apprehension;

(C) Provide the person with money, transportation, a weapon, a disguise, false identification documents, or any other means of avoiding discovery or apprehension;

(D) Prevent or obstruct, by means of force, intimidation, or deception, anyone from performing an act that might aid in the discovery or apprehension of the person;

(E) Suppress, by any act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person;

(F) Aid the person to protect or expeditiously profit from an advantage derived from the crime; or

(G) Provide expert services or expert assistance to the person. "Providing expert services or expert assistance" shall not be construed to apply to [a licensed attorney who discusses with a client the legal consequences of a proposed course of conduct or advises a client of legal or constitutional rights] [a licensed medical personnel who provides emergency medical treatment to a person whom the doctor believes committed an offense under this subchapter if, as soon as reasonably practicable either before or after providing the treatment, the doctor notifies a law enforcement agency].

"Serious physical injury." — means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

"Act of terrorism." — is defined in AMCI 2d 5501.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-207. The offense of terrorism is defined in Ark. Code Ann. § 5-54-205. *See* AMCI 2d 5506. The offense of causing a catastrophe is defined in Ark. Code Ann. § 5-38-202. See AMCI 2d 3805. "Knowingly" is defined in Ark. Code Ann. § 5-2-202. "Occupiable structure" is defined in Ark. Code Ann. § 5-38-101. "Rendering criminal assistance" is defined in Ark. Code Ann. § 5-54-201. "Serious physical injury" is defined in Ark. Code Ann. § 5-1-102. "Act of terrorism" is defined in Ark. Code Ann. § 5-54-201.

Hindering prosecution is a Class D felony if the defendant hinders the prosecution of a parent, child, brother, sister (including step relationships) or a spouse. Otherwise, it is a Class B felony.

AMCI 2d 5507-EXP
HINDERING PROSECUTION OF TERRORISM — STAGE ONE
VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant)* guilty of hindering prosecution of terrorism, you will so indicate on the verdict form provided to you. You will also make a finding about _____ *((defendant's)* relationship to _____ *(person whose prosecution was allegedly hindered)*, as requested on the form.

_____ *(Defendant)* asserts that (he) (she) is the (parent) (stepparent) (child) (stepchild) (brother) (stepbrother) (sister) (stepsister) (husband) (wife) of _____ *(person whose prosecution was allegedly hindered).* _____ *(Defendant)* has the burden of proving by a preponderance of the evidence that (he) (she) is the (parent) (stepparent) (child) (stepchild) (brother) (stepbrother) (sister) (stepsister) (husband) (wife) of _____ *(person whose prosecution was allegedly hindered)*, unless the relationship is so proved by other evidence in the case. "Preponderance of the evidence" means the greater weight of evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If the evidence with regard to _____ *(defendant's)* family relationship to _____ *(person whose prosecution was allegedly hindered)* appears to be equally balanced, or if you cannot say upon which side it weighs heavier, then you should find that the relationship has not been established.

If you reach a verdict of not guilty, you will indicate this on the form.

Whatever may be your finding as to _____ *(defendant's)* family relationship to _____ *(person whose prosecution was allegedly hindered)*, you are reminded that the State has the burden of establishing the guilt of _____ *(defendant)* upon the whole case beyond a reasonable doubt.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5507 and 5507-VF when the defendant is charged with hindering the prosecution of a relative, and the defendant's relationship to the person whose prosecution is hindered is disputed.

COMMENT

Hindering prosecution is a Class D felony if the defendant hinders the prosecution of a parent, child, brother, sister (including step relationships) or a spouse. *See* Ark. Code. Ann. § 5-54-207(b). Otherwise, it is a Class B felony.

AMCI 2d 5507-VF
HINDERING PROSECUTION OF TERRORISM — STAGE ONE
VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of hindering prosecution of terrorism.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find by a preponderance of the evidence that _____ *(defendant)* was the (parent) (stepparent) (child) (stepchild) (brother) (stepbrother) (sister) (stepsister) (husband) (wife) of _____ *(person whose prosecution was allegedly hindered).*

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 5507 and 5507-EXP when the defendant is charged with hindering the prosecution of a relative, and the defendant's relationship to the person whose prosecution is hindered is disputed. If the question is answered in the affirmative, the offense is a Class D felony. Otherwise, it is a Class B felony.

(Text continued on page 55-33)

AMCI 2d 5508

EXPOSING PUBLIC TO TOXIC BIOLOGICAL, CHEMICAL, OR RADIOACTIVE SUBSTANCES

_____ *(Defendant)* is charged with the offense of exposing the public to toxic biological, chemical, or radioactive substances. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* knowingly (delivered) (or) (caused the delivery of) a (biological) (or) (chemical) (or) (radioactive) substance to a (governmental facility) (school) (business) (hospital) (office building) (or) (similar facility open to the public); and

Second: That _____ *(defendant)* did so with the purpose of causing [bodily injury] [or] [evacuation of the (governmental facility) (school) (business) (hospital) (office building) (or) (similar facility open to the public)].

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely." — A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-208. "Knowingly" and "purposely" are defined in Ark. Code Ann. § 5-2-202.

Exposing the public to toxic biological, chemical, or radioactive substances is a Class Y felony.

AMCI 2d 5509

USE OF A HOAX SUBSTANCE

_____ *(Defendant)* is charged with the offense of use of a hoax substance. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant)* knowingly (delivered) (or) (caused the delivery) of a hoax substance [to a (governmental facility) (school) (business) (hospital) (office building) (or) (similar facility open to the public)] [to a (person's home) (person's business) (or) (person's place of work)]; and

Second: That _____*(defendant)* did so with the purpose of causing [anxiety, unrest, fear or personal discomfort] [or] [the evacuation of the (governmental facility) (school) (business) (hospital) (office building) (or) (similar facility open to the public) (person's home) (person's business) (or) (person's place of work)].

Definitions

"Hoax substance." — means any substance that would cause a reasonable person to believe that it is a dangerous chemical or biological agent, a poison, a harmful radioactive substance, or similar substance.

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely." — A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-54-209. "Knowingly" and "purposely" are defined in Ark. Code Ann. § 5-2-202.

Use of a hoax substance is a Class D felony.

CHAPTER 64

CONTROLLED SUBSTANCES

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INTRODUCTION

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(Text continued on page 64-3)

AMCI 2d 6400

INTRODUCTORY NOTE

Trial courts may take judicial notice that a controlled substance falls into a particular schedule. *Washington v. State*, 319 Ark. 583, 892 S.W.2d 505 (1995).

At the time these instructions were submitted to the publisher in 2001, there was an error in the Arkansas Code. Act 1782 of 2001 repealed Ark. Code Ann. § 29-30-162 and 163, which had the effect of removing the "sunset clause" in Ark. Code Ann. § 5-64-401(g), § 5-64-403(c)(5), and § 16-93-611. The 2001 supplement of the Arkansas Code mistakenly left the "sunset clause" in these sections of Title 5 and Title 16. This error should be corrected in supplements to the Code released in 2002. Instructions were prepared with the understanding that the referenced statutes would *not* sunset on April 30, 2002. These statutes impact the drug paraphernalia instructions beginning with AMCI 2d 6418 and other methamphetamine related instructions, including AMCI 2d 9404.

AMCI 2d 6401
CONTROLLED SUBSTANCES ACT—DEFINITIONS

"Administer" means the direct application of _____(controlled substance), whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by [a practitioner] [or] [the (patient) (or) (research subject) at the direction and in the presence of the practitioner].

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestin, and corticosteroid that promotes muscle growth. "Anabolic steroid" does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Director of the Department of Health for such administration. If any person prescribes, dispenses, or distributes such a steroid for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of _____(controlled substance or counterfeit substance) in exchange for money [or anything of value] [whether or not there is an agency relationship].

"Dispense" means to deliver _____(controlled substance) to [an ultimate user] [or] [a research subject] **by or pursuant to the lawful order of a practitioner** [including the (prescribing) (administering) (packaging) (labeling) (or) (compounding) necessary to prepare the substance for that delivery].

"Distribute" means to deliver other than by administering or dispensing _____(controlled substance).

"Distributor" means a person who distributes.

"Drug" means

[substances recognized as drugs in the official (United States Pharmacopeia) (Homeopathic Pharmacopoeia) (National Formulary) (or any supplement to [it] [them]).]

[substances intended for use in the (diagnosis) (cure) (mitigation) (treatment) (or) (prevention) of disease in man or animals.]

[substances (other than food) intended to affect the structure or any function of the body of man or animals.]

[(and) any substances intended for use as a component of any such substance.]

[The term does not include devices or their components, parts, or accessories.]

"Immediate precursor" means a substance which the Director of the Arkansas Department of Health has found to be and by rule designates as being the principal compound [commonly used] [or] [produced primarily for use], **and which is an immediate chemical intermediary used or likely to be used in the manufacture of _____(controlled substance), the control of which is necessary to prevent, curtail, or limit manufacture.**

"Manufacture" means the [production] [preparation] [propagation] [compounding] [conversion] [or] [processing] **of _____(controlled substance),** ___[either]___ [directly or indirectly by extraction from substances of natural origin] [or] [by means of chemical synthesis] [or] [by a combination of extraction and chemical synthesis] [and includes any (packaging or repackaging of the substances) (or) (labeling or relabeling of the container of the substance)]

[except that this term does not include the (preparation) (or) (compounding) of _____ *(controlled substance)* by an individual for his own use) (or) (the [preparation] [compounding] [packaging] [or] [labeling] of _____ *(controlled substance)* [by a practitioner as an incident to his administering or dispensing of _____ *(controlled substance)* in the course of his professional practice] [or] [by a practitioner or by his authorized agent under his supervision (for the purpose of) (or) (as an incident to) (research, teaching, or chemical analysis and not for sale).]

"Marijuana" means [(all parts and any variety and/or species) (the seeds) (the resin extracted from any part) of the plant Cannabis that contains THC (Tetrahydrocannabinol) whether growing or not]

[every compound, manufacture, salt, derivative, mixture, or preparation of the plant Cannabis that contains THC (Tetrahydrocannabinol), its seeds, or resin.]

[It does not include (the mature stalks of the plant) (fiber produced from the stalks) (oil or cake made from the seeds of the plant) (any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks [except the resin extracted therefrom], fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination), or (hemp-derived cannabidiol that (a) contains not more than three-tenths of one percent (0.3%) of tetrahydrocannabinol (THC) on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards, and (b) is not approved by the United States Food and Drug Administration for marketing as a medication).]

"Narcotic drug" means _____(drug which is defined as a narcotic drug by order of the Director of the Department of Health) (or any)

[opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, and salts whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, but not including the isoquinoline alkaloids of opium]

[poppy straw and concentrate of poppy straw]

[coca leaves, except coca leaves and extracts of coca leaves from which cocaines, ecgonine, and derivatives of ecgonine or their salts have been removed]

[cocaine, its salts, optical and geometric isomers, and salts of isomers]

[ecgonine, its derivatives, their salts, isomers, and salts of isomers]

[any (compound) (mixture) (or) (preparation) which contains any quantity of _____ *(any of the substances referred to in the above alternatives)*].

[This] [These] **substance(s)** [is] [are] **included whether produced** [directly or indirectly by extraction from substances of vegetable origin] [or] [independently by means of chemical synthesis] [or] [by a combination of extraction and chemical synthesis].

"Noncontrolled substance" means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the Director of the Department of Health.

"Practitioner" means

[a (physician) (dentist) (veterinarian) (scientific investigator) (or) (person) licensed, registered, or otherwise permitted to (distribute) (dispense) (conduct research with respect to) (or) (administer) _____ *(controlled substance)* in the course of professional practice or research in this State.]

[(a) (pharmacy) (hospital) (an institution) licensed, registered, or otherwise permitted to (distribute) (dispense) (conduct research with respect to) (or) (administer) _____ *(controlled substance)* in the course of professional practice or research in this State.]

"Production" means the [manufacture] [planting] [cultivation] [growing] [or] [harvesting of] _____ *(controlled substance)*.

"Ultimate user" means a person who lawfully possesses _____**(controlled substance)** [for his own use] [or] [for the use of a member of his household] [or] [for administering to an animal owned by him or by a member of his household].

COMMENT

Ark. Code Ann. § 5-64-101.

(Text continued on page 64-9)

AMCI 2d 6402

CREATING OR DELIVERING A COUNTERFEIT SUBSTANCE

_____ *(Defendant(s))* [is] [are] **charged with the offense of** [creating] [or] [delivering] **a counterfeit substance. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* [(purposely) (or) (knowingly) (or) (recklessly)] [created] [delivered] **a non-controlled substance; and**

Second: That the non-controlled substance [by overall dosage unit appearance (including color, shape, size, markings, packaging, and labeling)] [or] [upon the basis of representations made to the recipient] purports to [be] [have the physical or psychological effect associated with] _____*(controlled substance)*, **which is a controlled substance.**

NOTE ON USE

Definitions from AMCI 2d 6401 should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-64-401(b). This instruction uses the definition of a "counterfeit substance" contained in Ark. Code Ann. § 5-64-101(e). The statute lists seven factors to be considered in determining whether a substance is counterfeit. A trial court finding that any two of the factors exist is prima facie evidence that a substance is counterfeit.

Creating or delivering a counterfeit substance may be a Class B, C, or D felony.

AMCI 2d 6403

POSSESSION OF A COUNTERFEIT SUBSTANCE WITH INTENT TO DELIVER

_____ *(Defendant(s))* **[is] [are] charged with the offense of possessing a counterfeit substance with intent to deliver. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That the _____ *(substance)* **was a counterfeit substance. A substance is counterfeit if** [by overall dosage unit appearance (including color, shape, size, markings, packaging and labeling)] [or] [upon the basis of representations made to the recipient] purports to [be] [have the physical or psychological effect associated with] **a** _____ *(controlled substance)*, **which is a controlled substance, and**

Second: That the _____ *(defendant(s))* **possessed the** _____ *(substance)* **with the intent to deliver it.**

COMMENT

Ark. Code Ann. § 5-64-401(b). This instruction uses the definition of a "counterfeit substance" contained in Ark. Code Ann. § 5-64-101(e). Possession with intent to deliver a counterfeit substance which purports to be a Schedule I or II narcotic drug or a methamphetamine is a Class B felony. All other counterfeit substances possessed with intent to deliver are Class C felonies, except that a counterfeit substance purporting to be an unclassified controlled substance is a Class D felony.

(Text continued on page 64–13)

AMCI 6404

POSSESSION OF A CONTROLLED OR COUNTERFEIT SUBSTANCE

_____ *(Defendant(s))* [is] [are] **charged with the offense of** [unlawfully possessing _____] *(controlled substance)* [possessing a counterfeit substance].

To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(defendant(s))* **possessed** [_____*(substance)*, a controlled substance;] [a counterfeit substance. A counterfeit substance is a non-controlled substance which (by overall dosage unit appearance including color, shape, size, markings, packaging and labeling) (or) (upon the basis of representations made to the recipient) purports to (be) (have the physical or psychological effect associated with) a controlled substance;] **and**

Second: That [he] [they] **did so** [knowingly] [or] [purposely].

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

NOTE ON USE

Use this instruction in conjunction with AMCI 2d 6404-D (except when the charge relates to a counterfeit substance), 8101, 8301-VF, and an appropriate Stage Two explanatory instruction and verdict form. If, under Ark. Code Ann. § 5-64-401, a defendant found guilty of a possession offense is alleged to have previously been convicted of a possession offense, then AMCI 2d 9201 or 9202 (depending on whether the previous conviction allegation is disputed), appropriately modified, should be given in Stage Two along with an appropriate standard verdict form from Chapter 93.

The bracketed paragraph will ordinarily be given only when constructive possession is an issue.

This offense will often be submitted as a lesser offense of possession of a controlled substance or a counterfeit substance with intent to deliver.

COMMENT

Ark. Code Ann. § 5-64-401(c).

The definition of possession is adopted from guidelines suggested in several sources and has been approved in *Holloway v. State*, 293 Ark. 438, 738 S.W.2d 796 (1987). *See Perez v. State*, 249 Ark. 1111, 463 S.W.2d 394 (1971); *Shell v. State*, 184 Ark. 248, 42 S.W.2d 19 (1931); 28 C.J.S. *Drugs and Narcotics Supplement* §§ 208, 210; 1 Devitt & Blackmar *Federal Jury Practice and Instructions* § 16.07 and § 58.16. *Compare Williams v. State*, 289 Ark. 443, 711 S.W.2d 825 (1986) with *Plotts v. State*, 297 Ark. 66, 759 S.W.2d 793 (1988) and *Littlepage v. State*, 314 Ark. 361, 863 S.W.2d 276 (1993) (joint control of automobile where drugs found).

The Intent Requirement

Prior to 1983, Ark. Stat. Ann. § 82-2617(c) provided that it was "unlawful for any person *knowingly* or *intentionally* to possess a controlled substance.. . ." (Emphasis added.) As amended by 1983 Ark. Acts 787, this subsection, now § 5-64-401(c), makes it "unlawful for any person to possess a controlled substance or counterfeit substance.. . ." § 5-64-401(c) no longer contains an explicit reference to a culpable mental state. Despite this, appellate court decisions indicate that the prosecution may still have to prove "intentional" possession. *See Turner v. State*, 24 Ark. App. 102, 749 S.W.2d 339 (1988), where the Arkansas Court of Appeals, in response to appellant's argument that he "never formed a present intent to possess marijuana. . .," *Turner v. State,* 24 Ark. App. 104, 749 S.W.2d 340 (1988), stated, "[W]e find there was substantial evidence from which

the judge, sitting as the jury, could find that the appellant picked up the sack of marijuana with the intent to exercise dominion, control, or management over it." *Turner v. State*,24 Ark. App. 104, 749 S.W.2d 340–341 (1988). As noted above, the Arkansas Supreme Court has approved the AMCI 6404 definition of constructive possession, which speaks in terms of "intent" to possess. *Holloway v. State*, 293 Ark. 438, 738 S.W.2d 796 (1987). Neither the Supreme Court nor the Court of Appeals has unambiguously indicated whether, under § 5-2-203(b), governing the State's burden of proof when no culpable mental state is specified, the state must prove a knowing, as opposed to a reckless, culpable mental state with respect to a defendant's awareness that the item possessed was, in fact, a controlled substance. Hence, this instruction has not been changed from its original form.

Possession of a substance or counterfeit substance listed in Schedule I or II is a Class C felony. Otherwise, possession is a Class A misdemeanor. If an individual has a prior conviction for possession, a second conviction is punishable as a Class D felony. Third and subsequent convictions are punishable as Class C felonies.

The Useable Amount Requirement

In *Harbison v. State*, 302 Ark. 315, 790 S.W.2d 146 (1990), the Arkansas Supreme Court analyzed a long line of cases from other jurisdictions to determine what evidence was required to support a conviction for possession of a controlled substance. The court concluded that to support a conviction there must be an amount of a controlled substance either (1) sufficient to permit knowledge of its presence without the need for scientific identification or (2) sufficient to be useable in the manner in which such a substance is ordinarily used. Based upon *Harbison*, "useable amount" appeared to become an element of the state's proof.

However, in subsequent rulings, the court has more narrowly construed the *Harbison* holding. It is now clear that the state need not produce expert testimony as to the effect of a given quantity of drugs on the human body, nor is the defendant entitled to an instruction that "useable amount" means having an effect on the body. *Terrell v. State*, 35 Ark. App. 185, 818 S.W.2d 579 (1991). Additionally, "useable amount" is not a consideration in delivery of controlled substance cases, *Kellogg v. State*, 37 Ark. App. 162, 827 S.W.2d 166 (1992), nor in cases involving possession with intent to deliver where there is other evidence of the defendant's intent presented. *Johnson v. State*, 23 Ark. App. 200, 745 S.W.2d 651 (1988). The Arkansas Supreme Court recently indicated that usable amount was merely a factor to be considered where the accused is charged with possession of a controlled substance. *Conley v. State*, 308 Ark. 70, 821 S.W.2d 783 (1992).

AMCI 2d 6404-D

POSSESSION OF A CONTROLLED SUBSTANCE — DEFENSE OF AUTHORIZED POSSESSION

_____ *(Defendant(s))* **assert(s) as a defense that** [he was] [they were] **properly authorized to possess** _____*(substance)*. **Authorized possession is a defense only if:**

[_____*(Defendant(s))* obtained the _____*(substance)* directly from a practitioner acting in the course of his professional practice]

[or]

[_____*(Defendant(s))* obtained the _____*(substance)* pursuant to (a valid prescription) (an order) from a practitioner who was acting in the course of his professional practice.]

The defendant(s), in asserting the defense of authorized possession, [is] [are] **required only to raise a reasonable doubt in your minds. Consequently, if you believe that the defense of authorized possession has been shown to exist, or if the evidence with regard to authorized possession leaves you with a reasonable doubt as to the defendant's guilt, then you must find** [him] [them] **not guilty.**

NOTE ON USE

Definitions from AMCI 2d 6401 should be given when requested by counsel or when the court feels that they will be helpful to the jury. There may be other aspects of authorized possession. The statute has the common proviso "except as otherwise authorized by this chapter." These defenses are subject to change as the chapter is amended.

COMMENT

Ark. Code Ann. § 5-64-401(c).

AMCI 2d 6404-EXP
POSSESSION OF CONTROLLED SUBSTANCE IN DETENTION FACILITY—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of possession of a controlled substance, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be use in conjunction with AMCI 2d 6404 and 6404-VF or AMCI 2d 64.419 and AMCI 2d 64.419-VF, where the evidence indicates that the possession occurred in a detention facility.

AMCI 2d 6404-VF
POSSESSION OF CONTROLLED SUBSTANCE IN DETENTION FACILITY—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ (defendant(s)) is guilty of possession of a controlled substance.

_____
FOREMAN

We, the Jury, find _____ (defendant(s)) not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant(s))* committed the offense in a [state] [county] [or] [city] [criminal detention facility] [or] [juvenile detention facility]?

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 6404-EXP.

COMMENT

Ark. Code Ann. § 5-64-401 (f) (repealed effective July 27, 2011) and § 5-64-419(c).

(Text continued on page 64-23)

AMCI 2d 6405

MANUFACTURING A CONTROLLED SUBSTANCE

_____*(Defendant(s))* [is] [are] **charged with the offense of manufacturing** _____*(substance)*. **To sustain this charge the State must prove beyond a reasonable doubt that** _____*(defendant(s))* **knowingly or purposely:**

[(Planted) (or) (cultivated) (or) (grew) (or) (harvested) _____*(substance)*.]

[(Produced) (or) (prepared) (or) (propagated) (or) (compounded) (or) (converted) (or) (processed) _____*(substance)* ([directly] [or] [indirectly] by extraction from substances of natural origin) (or) (by means of chemical synthesis) (or) (by a combination of extraction and chemical synthesis.)]

[(Packaged) (or) (repackaged) _____*(substance)*.]

(Labeled) (or) (relabeled) a container of _____*(substance)*.]

[Except that "manufacturing" does not include the preparation or compounding of a controlled substance by an individual for his own use.]

NOTE ON USE

Where evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 6408-VF to 6408.3-VF, AMCI 2d 6405 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in stage two a punishment instruction from chapter 91 and a verdict form from chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 6408-VF to 6408.3-VF, AMCI 2d 6405 should be used in conjunction with the appropriate EXP instruction and verdict form in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

The last bracketed clause should be given when requested, and there is evidence to support a finding that defendant prepared or compounded a controlled substance for his own use. The personal use exception is limited to the preparation or compounding of a controlled substance that is already in existence. It does not apply to the creation of a controlled substance even if intended for personal use. *Owens v. State*, 325 Ark. 110, 926 S.W. 2d 650 (1996)(exception is not available to person who makes methamphetamine for his own use). Thus, a person who uses marijuana acquired from another person to make tea or brownies for personal use is not guilty of manufacturing a controlled substance. *Cf. Patty v. State*, 260 Ark. 539, 542 S.W. 2d 494 (1976). But a person who grows marijuana for personal use can be convicted of manufacturing a controlled substance. *Bedell v. State*, 260 Ark. 401, 541 S. W. 2d 297 (1976).

COMMENT

Ark. Code Ann. § 5-64-401.

"Manufacture" and "production" are defined in AMCI 2d 6401 and are incorporated, after appropriate tailoring, in this instruction.

1994 Ark. Acts 46 (Second Extraordinary Session) amended § 5-64-401(a)(i)(iv) by adding the following language to each sentencing subpart: "[F]or all purposes other than disposition, this offense is a Class [A, B, or C] felony." The language appears to have been added to permit grading of inchoate offenses.

AMCI 2d 6406

DELIVERY OF A CONTROLLED SUBSTANCE

_____ *(Defendant(s))* [is] [are] **charged with the offense of delivering** _____ *(substance)*. **To sustain this charge the State must prove beyond a reasonable doubt that:**

_____ *(Defendant(s))* **knowingly or purposely transferred** _____ *(substance)* **to another person in exchange for** [money] [or] [anything of value].

Definition

"Delivery." — of a controlled substance occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another, in exchange for money or anything of value.

NOTE ON USE

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 6408-VF to 6408.3-VF, AMCI 2d 6406 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in stage two a punishment instruction from chapter 91 and a verdict form from chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 6408-VF to 6408.3-VF, AMCI 2d 6406 should be used in conjunction with the appropriate EXP instruction and verdict form in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

Delivery is covered by Ark. Code Ann. § 5-64-401 and -701. If the substance is listed in Schedule I the defendant faces a minimum 10-year sentence under § 5-64-701. Delivery of other controlled substances is governed by § 5-64-401. Under both provisions the defense of agency is specifically excluded. Section 5-64-701 does not include the word "constructive" in the definition of delivery. When the definition is given and a Schedule I substance is involved, the reference to constructive transfer must be omitted if the punishment is to be imposed under § 5-64-701.

COMMENT

Ark. Code Ann. §§ 5-64-401 and -701.

"Deliver" is defined in § 5-64-101(f); "delivery" is defined in §§ 5-64-101(f) and -701(b), the latter applying to substances included in Schedule I.

The statute does not require that the perpetrator ultimately receive the money, only that he participates in the transfer where value is exchanged. *Higgs v. State,* 313 Ark. 272, 854 S.W.2d 328 (1993).

1994 Ark. Acts 46 (Second Extraordinary Session) amended § 5-64-401(a)(i)(iv) by adding the following language to each sentencing subpart: "[F]or all purposes other than disposition, this offense is a Class [A, B, or C] felony." The language appears to have been added to permit grading of inchoate offenses.

AMCI 2d 6407

POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER

_____ *(Defendant(s))* [is] [are] **charged with the offense of possessing** _____ *(substance)* **with the intent to** [manufacture] [or] [deliver] **it. To sustain this charge the State must prove beyond a reasonable doubt that:**

_____ *(Defendant(s))* **possessed** _____ *(substance)* **with the intent to** [(produce) (or) (plant) (or) (cultivate) (or) (grow) (or) (harvest) (or) (prepare) (or) (propagate) (or) (compound) (or) (convert) (or) (process) (or) (package) (or) (repackage) (or) (label) (or) (relabel) it.]

[transfer it to another person in exchange for money or anything of value.]

The amount or quantity of _____ *(substance)* **which you find beyond a reasonable doubt to have been possessed by the defendant(s) is evidence which you may consider along with all the other facts and circumstances of the case in determining the purpose or intent for which the** _____ *(substance)* **was possessed.**

NOTE ON USE

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 6408-VF to 6408.3-VF, AMCI 2d 6407 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in stage two a punishment instruction from chapter 91 and a verdict form from chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 6408-VF to 6408.3-VF, AMCI 2d 6407 should be used in conjunction with the appropriate EXP instruction and verdict form in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

Where an issue relating to constructive possession arises, the court should instruct the jury using the bracketed language found at AMCI 2d 6404. Also, see Comment to AMCI 2d 6404.

COMMENT

Ark. Code Ann. §§ 5-64-401 and -101(f) and (m).

Possession of statutorily defined quantities of certain controlled substances creates a rebuttable presumption of intent to manufacture or deliver. Ark. Code Ann. § 5-64-401(d). The quantity referred to in the statute means the undiluted amount of the substance. *Dixon v. State,* 260 Ark. 857, 545 S.W.2d 606 (1977). Submitting the statutory presumption to the jury is error, because it constitutes a comment on the evidence. *French v. State,* 256 Ark. 298, 506 S.W.2d 820 (1974). It is not error to instruct that the amount of the substance in the possession of the defendant is evidence the jury may consider with other factors to determine intent. *Milburn v. State,* 260 Ark. 553, 542 S.W.2d 490 (1976).

1994 Ark. Acts 46 (Second Extraordinary Session) amended § 5-64-401(a)(i)(iv) by adding the following language to each sentencing subpart: "[F]or all purposes other than disposition, this offense is a Class [A, B, or C] felony." The language appears to have been added to permit grading of inchoate offenses.

AMCI 2d 6408-EXP

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE I OR II NARCOTIC SUBSTANCES OR METHAMPHETAMINE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* **guilty of** [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____ *(a Schedule I or II narcotic substance or methamphetamine)*, **you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 6405-6407 and 6408-VF in Schedule I or II narcotic substance or amphetamine cases where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 6408-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 6408-VF

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE I OR II NARCOTIC SUBSTANCES OR METHAMPHETAMINE— STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* **is guilty of** [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____ *(a Schedule I or II narcotic substance or methamphetamine)*.

_____

FOREMAN

We, the Jury, find _____ *(defendant)* **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that the amount of _____*(Schedule I or II narcotic substance or methamphetamine)* [by aggregate weight, including adulterants and dilutants] **that was** [manufactured] [delivered] [possessed with intent to manufacture or deliver] **by** _____ *(defendant)* **was**

(1) 400 grams or more.

_____

FOREMAN

(2) At least 200 grams but less than 400 grams.

_____

FOREMAN

(3) At least 28 grams but less than 200 grams.

_____

FOREMAN

(4) Less than 28 grams.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 6405-6407 and 6408-EXP in Schedule I and II narcotic or amphetamine cases where the evidence affords the jury a rational basis for selecting one verdict from several possibilities.

The parenthetical "aggregate weight . . . dilutants" expression need not be read unless weight has been drawn in issue.

If a verdict of guilt is returned, AMCI 2d 9106 and 9306-VF should be used in Stage Two.

The verdict form should be tailored so that the jury is not given the option of finding, for example, delivery of a greater amount of a substance than is charged. If the State contends the defendant delivered 200 grams of a substance, and the defendant takes the position that only 100 grams were delivered, then the 400 gram finding should not be submitted to the jury.

AMCI 2d 6408.1-EXP

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE I, II, OR III NON-NARCOTIC SUBSTANCES OTHER THAN METHAMPHETAMINE — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____*(defendant)* **guilty of** [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____*(Schedule I, II, or III non-narcotic substances other than methamphetamine)*, **you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 6405-6407 and 6408.1-VF in Schedule I, II, or III non-narcotic, non-amphetamine cases where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 6408.1-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 6408.1-VF

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE I, II, OR III NON-NARCOTIC SUBSTANCES OTHER THAN METHAMPHETAMINE—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____*(defendant)* **is guilty of [manufacture of]** [delivery of] [possession with intent to manufacture or deliver] _____*(Schedule I, II, or III non-narcotic substance other than methamphetamine)*.

_____

FOREMAN

We, the Jury, find _____*(defendant)* **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall make ONE of the following findings.

We, the Jury, find beyond a reasonable doubt that the amount of _____*(Schedule I, II, or III non-narcotic substance other than methamphetamine)* [by aggregate weight, including adulterants and dilutants] **that was** [manufactured] [delivered] [possessed with intent to manufacture or deliver] **by** _____*(defendant)* **was:**

(1) 400 grams or more.

_____

FOREMAN

(2) At least 28 grams but less than 400 grams.

_____

FOREMAN

(3) Less than 28 grams.

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 6405-6407 and 6408.1-EXP in Schedule I, II, and III non-narcotic, non-amphetamine cases where the evidence affords the jury a rational basis for selecting one verdict from several possibilities.

The parenthetical "aggregate weight . . . dilutants" expression need not be read unless weight has been drawn in issue.

If a verdict of guilt is returned, AMCI 2d 9106 and 9306-VF should be used in Stage Two.

AMCI 2d 6408.2-EXP

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE IV OR V SUBSTANCES — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____*(defendant)* **guilty of** [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____*(Schedule IV or V substance)*, **you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 6405-6407 and 6408.2-VF in Schedule IV and V substance cases where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 6408.2-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 6408.2-VF

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE IV OR V SUBSTANCES — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____*(defendant)* **is guilty of** [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____*(Schedule IV or V substance)*.

_____

FOREMAN

We, the Jury, find _____*(defendant)* **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall make ONE of the following findings.

We, the Jury, find beyond a reasonable doubt that the amount of _____*(Schedule IV or V substance)* [by aggregate weight, including adulterants and dilutants] **that was** [manufactured] [delivered] [possessed with intent to manufacture or deliver] **by** _____*(defendant)* **was:**

(1) 400 grams or more.

_____

FOREMAN

(2) At least 200 grams but less than 400 grams.

_____

FOREMAN

(3) Less than 200 grams.

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 6405-6407 and 6408.2-EXP in Schedule IV and V substance cases where the evidence affords the jury a rational basis for selecting one verdict from several possibilities.

The parenthetical "aggregate weight . . . dilutants" expression need not be read unless weight has been drawn in issue.

If a verdict of guilt is returned, AMCI 2d 9106 and 9306-VF should be used in Stage Two.

AMCI 2d 6408.3-EXP

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE VI SUBSTANCES — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* **guilty of** [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____*(Schedule VI substance)*, **you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 6405-6407 and 6408.3-VF in Schedule VI cases where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 6408.3-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 6408.3-VF

MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO MANUFACTURE OR DELIVER SCHEDULE VI SUBSTANCES— STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____*(defendant)* is guilty of [manufacture of] [delivery of] [possession with intent to manufacture or deliver] _____*(Schedule VI substances)*.

_____

FOREMAN

We, the Jury, find _____*(defendant)* **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall make ONE of the following findings.

We, the Jury, find beyond a reasonable doubt that the amount of _____*(Schedule VI substance)* **that was** [manufactured] [delivered] [possessed with intent to manufacture or deliver] **by** _____*(defendant)* **was:**

(1) 100 pounds or more.

_____

FOREMAN

(2) At least 10 pounds but less than 100 pounds.

_____

FOREMAN

(3) Less than 10 pounds.

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 6405-6407 and 6408.3-EXP in Schedule VI substance cases where the evidence affords the jury a rational basis for selecting one verdict from several possibilities.

If a verdict of guilt is returned, AMCI 2d 9106 and 9306-VF should be used in Stage Two.

AMCI 2d 6409

DISTRIBUTION OF CONTROLLED SUBSTANCE TO MINOR

_____ (Defendant(s)) [is] [are] **charged with the offense of distributing a controlled substance to a minor. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____(defendant(s)) **purposely, knowingly, or recklessly delivered** _____ (Schedule I-V controlled substance or methamphetamine) **to** _____ (minor-distributee); **and**

Second: That _____ (defendant(s)) [was] [were] **at least 18 years old at the time of the delivery; and**

Third: That _____ (minor-distributee) **was less than 18 years old and at least 3 years younger than** _____ (defendant(s)) **at the time of the delivery.**

Definition

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance in exchange for money or anything of value, whether or not there is an agency relationship.

NOTE ON USE

This instruction applies to prosecutions under Ark. Code Ann. § 5-64-406, permitting doubling the maximum normal exposure to incarceration for distribution of Schedule I-V controlled substances or methamphetamine to minors.

Ordinarily, this instruction may be used with AMCI 2d 8101, 8301-VF, and, in stage two, with 9106 and 9306-VF. In cases where the evidence affords the jury a rational basis for selecting one verdict from several possibilities, special instructions along lines suggested by AMCI 2d 6408-EXP --6408.3-EXP and special verdict forms based on AMCI 2d 6408-VF --6408.3-VF should be submitted to the jury.

"Distribute"' is defined in Ark. Code Ann. § 5-64-101 as "to deliver other than by administering or dispensing a controlled substance." If an issue as to "administering"' or "dispensing" is raised by the evidence, the court should modify the instruction by using the term "distribute" ' instead of "deliver" and give the statutory definitions of "distribute," "administer," and "dispense."

COMMENT

Ark. Code Ann. § 5-64-406.

AMCI 2d 6410

DELIVERY OF CONTROLLED SUBSTANCE TO MINOR

_____ *(Defendant(s))* [is] [are] **charged with the offense of delivery of a controlled substance to a minor. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* **purposely, knowingly, or recklessly delivered** _____*(Schedule I-VI controlled substance)* **to** _____*(minor)*; **and**

Second: That _____ *(minor)* **was less than 18 years old at the time of the delivery.**

Definition

"Deliver" or "delivery" — means the actual, constructive, or attempted transfer from one person to another of a controlled substance in exchange for money or anything of value, whether or not there is an agency relationship.

NOTE ON USE

This instruction applies to prosecutions under Ark. Code Ann. § 5-64-410, providing a 10-year minimum sentence for delivering controlled substances to "school students in grades one (1) through twelve (12) or any other person under eighteen (18) years of age."

Ark. Code Ann. § 5-64-410 provides that anyone who is convicted of delivering a controlled substance (Schedules I through VI) to a minor must be sentenced to a term of imprisonment of not less than 10 years. Ark. Code Ann. § 5-64-410 provides that the mandatory 10-year minimum sentence is "cumulative and supplemental to any other laws of this state prescribing penalties for delivery of controlled substances." Ark. Code Ann. § 5-64-401 provides terms of imprisonment *and* fines for persons convicted of delivering Schedule I-V controlled substances. It provides terms of imprisonment *and/or* fines for persons convicted of delivering a controlled substance in Schedule VI.

Ordinarily, this instruction may be used with AMCI 2d 8101, 8301-VF, and, in Stage Two, with 9106 and 9306-VF. In cases where the evidence affords the jury a rational basis for selecting one verdict from several possibilities, special instructions along lines suggested by AMCI 2d 6408-EXP — 6408.3-EXP and special verdict forms based on AMCI 2d 6408-VF — 6408.3-VF should be submitted to the jury.

COMMENT

Ark. Code Ann. § 5-64-410.

(Text continued on page 64–49)

AMCI 2d 6411
CONTROLLED SUBSTANCES—FRAUDULENTLY OBTAINING OR POSSESSING

_____ *(Defendant(s))* [is] [are] **charged with fraudulently** [acquiring] [or] [obtaining possession of] _____ *(substance).* **To sustain this charge the State must prove beyond a reasonable doubt that** _____ **(defendant(s)) knowingly** [acquired] [or] [obtained possession of] _____ *(substance)* **by** [misrepresentation] [or] [fraud] [or] [forgery] [or] [deception] [or] [subterfuge] [or] [theft].

COMMENT

Ark. Code Ann. § 5-64-403(a)(2).

Fraudulently acquiring or obtaining possession of a controlled substance is a Class D felony.

The committee has not adopted an instruction for § 5-64-403(a)(1). That section incorporates by reference both another provision of the Controlled Substances Act and provisions of federal law which depend on published regulations. The changing nature of the cited provisions, particularly regulations, limits the value of a uniform instruction.

Attempt to commit a Class D felony is a Class A misdemeanor (Ark. Code Ann. § 5-3-203). However, a second or subsequent offense of attempt to commit this offense is a Class D felony.

AMCI 2d 6412
CONTROLLED SUBSTANCES—FRAUDULENT RECORDS

_____ *(Defendant(s))* [is] [are] **charged with the offense of** [furnishing false or fraudulent information in] [omitting material information from] **a required** [application] [report] [record] [or] [_____] *(other document)*. **To sustain this charge the State must prove beyond a reasonable doubt that:**

[_____ *(Defendant(s))* knowingly furnished false or fraudulent material information in (a) (an) (application) (report) (record) (or) _____ *(other document)* required by law to be kept or filed.]

[_____ *(Defendant(s))* knowingly or intentionally omitted material information from (a) (an) (application) (report) (record) (or) (_____) *(other document)* required by law to be kept or filed.]

COMMENT

Ark. Code Ann. § 5-64-403(a)(3).

The offense covered by this instruction is a Class D felony.

A second or subsequent offense of attempt to commit this offense is a Class D felony. See Comment, AMCI 2d 6411.

AMCI 2d 6413
CONTROLLED SUBSTANCES—FRAUDULENT DEVICES

_____ *(Defendant(s))* [is] [are] **charged with the offense of** [making] [distributing] [possessing] **a device for marking a drug** [or container thereof] [or label thereof] **so as to render the drug a counterfeit substance. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ **(defendant(s)) knowingly** [made] [distributed] [possessed] **a** [(punch) (die) (plate) (stone) (_____) *(other imprint device)*]; **and**

Second: That this device was designed to [(print) (or) (imprint) (or) (reproduce) **the** (trademark) (trade-name) (_____) *(other identifying mark)* of another (or any likeness thereof)] **upon any** [drug] [container] [label] **so as to render the drug a counterfeit substance.**

NOTE ON USE

In this chapter there are so many possibly pertinent definitions that they are set out in AMCI 2d 6401 instead of being appended to each instruction. Appropriate definitions should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-64-403(a)(4).

The offenses covered by this instruction are Class D felonies.

A second or subsequent offense of attempt to commit this offense is a Class D felony. See Comment, AMCI 2d 6411.

(Text continued on page 64-55)

AMCI 2d 6413.1
CONTROLLED SUBSTANCES—FRAUDULENT—PRACTICES

_____ *(Defendant(s) [is] [are]* charged with controlled substances fraudulent practices. To sustain this charge the State must prove beyond a reasonable doubt that:

_____ *(Defendant(s))* [agreed] [consented] [or] [in any manner offered] to sell, furnish, transport, administer, or give _____, a controlled substance, or to arrange to sell, furnish, transport, administer, or give _____, a controlled substance, and then to substitute a non-controlled substance in lieu of the controlled substance bargained for.

NOTE ON USE

The proffer of a controlled substance creates a rebuttable presumption of knowingly agreeing, consenting, or offering to sell, furnish, transport, administer, or give a noncontrolled substance that does not require additional showing of specific purpose to substitute a noncontrolled substance. Use AMCI 205 for this statutory presumption.

COMMENT

Ark. Code Ann. § 5-64-403(a)(5)(A) and (B).

A conviction under subdivision (a)(5) with respect to a noncontrolled substance represented to be a controlled substance classified in:

(A) Schedule I or Schedule II is a Class C felony;

(B) Schedule III, Schedule IV, or Schedule V is a Class D felony; or

(C) Schedule VI is a Class A misdemeanor.

AMCI 2d 6414
CONTINUING CRIMINAL ENTERPRISE

_____ *(Defendant(s))* [is] [are] charged with the offense of continuing criminal enterprise. To sustain this charge the State must prove beyond a reasonable doubt that:

First: _____ *(Defendant(s))* committed _____ (felony controlled substance offense except § 5-64-401(c) offense);

Second: This offense was part of a continuing series of two or more other felony offenses: namely _____ and _____ (at least two felony controlled substance offenses);

Third: With respect to the commission of all of these offenses, _____ *(defendant(s))* organized, supervised, or managed five (5) or more other persons with whom _____ *(defendant(s))* acted in concert; and

Fourth: _____ *(Defendant(s))* obtained substantial income or resources from the commission of these offenses.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 6414-PUF, defining the primary and underlying offenses. In cases involving more than one defendant, upon request the court should repeat both instructions for each defendant. The punishment of a continuing criminal enterprise is geared to the penalty for the underlying offense mentioned in paragraph First, the penalty being up to twice the term of imprisonment and fine that could otherwise be imposed for the underlying offense. The standard verdict forms found at AMCI 2d 9301 *et seq.*, appropriately modified, may be used.

COMMENT

Ark. Code Ann. § 5-64-405.

Hughey v. State, 310 Ark. 721, 840 S.W.2d 183 (1992).

AMCI 2d 6414-PUF
CONTINUING CRIMINAL ENTERPRISE: PRIMARY AND UNDERLYING FELONIES

As a part of the charge of Continuing Criminal Enterprise, the State contends that _____ *(defendant(s))* **committed** _____ *(felony controlled substance offense in paragraph First of AMCI 2d 6414)*. **To prove this offense, the State must prove beyond a reasonable doubt:**

[insert appropriate elements from instruction on applicable offense.]

In addition, as a part of the charge of continuing criminal enterprise, the State contends that _____ *(paragraph First offense above)* **was part of a continuing series of two or more felony offenses; namely,** _____ and _____ *(specify at least 2 felony controlled substance offenses)*.

To prove _____ *(first additional felony controlled substance offense)*, **the State must prove beyond a reasonable doubt:**

[insert appropriate elements from instructions on applicable offense.]

To prove _____ *(second additional felony controlled substance offense)*, **the State must prove beyond a reasonable doubt:**

[insert appropriate elements from instruction on applicable offense.]

NOTE ON USE

A charge of continuing criminal enterprise requires proof of at least three felonies. This instruction is designed for use in defining these felonies. It should be given in every continuing criminal enterprise trial.

COMMENT

Ark. Code Ann. § 5-64-405.

AMCI 2d 6415
ILLEGAL POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE OR PHENYLPROPANOLAMINE

_____ *(Defendant)* **is charged with the offense of unlawfully possessing** [*ephedrine*] [*pseudoephedrine*] [*phenylpropanolamine*].

To sustain this charge, the State must prove the following things beyond a reasonable doubt:

First, that _____ *(Defendant)* **possessed** [more than five (5) grams of ephedrine] [more than nine (9) grams of pseudoephedrine] [or] [more nine (9) grams of phenylpropanolamine;] **and**

Second, that he did so [knowingly] [or] [purposely].

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definitions

The terms "ephedrine," "pseudoephedrine," and "phenylpropanolamine," include their salts, optical isomers, and salts of optical isomers, alone or in a mixture. These terms mean any drug product containing ephedrine, pseudoephedrine or phenylpropanolamine or any of their salts, isomers, or salts of isomers, alone or in a mixture.

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

See Note on Use to AMCI 2d 6404 for general instruction on possession. *See* Ark. Code Ann. § 5-64-1101 (a) for a defense of authorized possession which has limited application. An instruction will have to be prepared in the event the defense is an issue in the trial.

The bracketed last paragraph will ordinarily be given only when constructive possession is an issue.

COMMENT

Ark. Code Ann § 5-64-1101(a). *See* Comment to AMCI 2d 6404 (possession of a controlled substance).

The terms "ephedrine," "pseudoephedrine," and "phenylpropanolamine" are defined in Ark. Code Ann § 5-64-1103 (e) (1). "Purposely" and "knowingly" are defined in Ark. Code Ann. § 5-2-202 (1) and (2).

This offense is a Class D felony.

AMCI 2d 6416
POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE WITH THE PURPOSE TO MANUFACTURE METHAMPHETAMINE

[ ] *(Defendant)* **is charged with the offense of possessing** [ephedrine] [pseudoephedrine] [phenylpropanolamine] **with the purpose to manufacture** *[methamphetamine] [or] [Schedule I or II narcotic drug].* **To sustain this charge the State must prove the following beyond a reasonable doubt:**

That [ ] (defendant) **possessed** [ephedrine] [pseudoephedrine] or [phenylpropanolamine **with the purpose to manufacture** *[methamphetamine] [or] [insert name of Schedule I or II narcotic drug].*

The amount or quantity of [ ] [ephedrine] [ ] [pseudoephedrine] [ ] [phenylpropanolamine] which you find beyond a reasonable doubt to have been possessed by the defendant is evidence which you may consider along with all the other facts and circumstances of the case in determining the purpose or intent for which the [ephedrine] [pseudoephedrine] [phenylpropanolamine] was possessed.

Definitions

The terms "ephedrine," "pseudoephedrine," and "phenylpropanolamine," include their salts, optical isomers, and salts of optical isomers, alone or in a mixture. These terms mean any drug product containing ephedrine, pseudoephedrine or phenylpropanolamine or any of their salts, isomers, or salts of isomers, alone or in a mixture.

"Manufacture."—means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extracting from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container of the substance. This term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation or compounding or packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice or by a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

"Possession."—There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

NOTE ON USE

Use in conjunction with AMCI 2d 6416-PR when appropriate.

When an issue relating to constructive possession arises, the court should instruct the jury using the bracketed language found in AMCI 2d 6415. *See* Note on Use to AMCI 2d 6404, 6407.

COMMENT

Ark. Code Ann § 5-64-1102(a).

The terms "ephedrine," "pseudoephedrine," and "phenylpropanolamine" are defined in Ark. Code Ann § 5-64-1103 (e) (1). "Manufacture" is defined in Ark. Code Ann § 5-64-101(m).

This offense is a Class B or Class D felony.

AMCI 2d 6416-EXP
POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANAOLAMINE WITH THE PURPOSE TO MANUFACTURE—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

If you find [ ] (defendant) **guilty of possession of** [ephedrine] [pseudoephedrine] [or] [phenylpropanolamine] **with the purpose to manufacture** *[methamphetamine] [Schedule I or II narcotic drug]*, **you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

AMCI 2d 6416-VF
POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANAOLAMINE WITH THE PURPOSE TO MANUFACTURE—STAGE ONE VERDICT EXPLANATION—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that [ ] (defendant) **is guilty of possession** of [ephedrine] [pseudoephedrine] [or] [phenylpropanolamine] **with the purpose to manufacture** [methamphetamine] [Schedule I or II narcotic drug].

_____

FOREMAN

We, the Jury, find [ ] (defendant(s)) **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the amount of [ephedrine] [pseudoephedrine] [or] [phenylpropanolamine] **possessed by** [ ] *(defendant(s))* **was:**

1. A quantity capable of producing more than 10 grams of methamphetamine?

YES _____

NO _____

_____

FOREMAN

2. A quantity capable of producing 10 grams or less of methamphetamine?

YES _____

NO _____

_____

FOREMAN

3. A quantity capable of producing 28 grams or more of _____ *(insert name of Schedule I or II controlled substance that is a narcotic drug) (or) (methamphetamine).*]

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

A conviction of the offense is a Class D felony if the amount is capable of producing 10 grams or less of methamphetamine or a Class B felony if more than 10 grams. It is also a Class B felony if the amount is 28 grams or more and is capable of producing not just methamphetamine but a Schedule I or II controlled substance that is a narcotic drug.

AMCI 2d 6416-PR
POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE WITH INTENT TO MANUFACTURE—PRESUMPTION

The possession of [more than five (5) grams of ephedrine] [more than nine (9) grams of pseudoephedrine] [or] [more than nine (9) grams of phenylpropanolamine] **is evidence of the intent to manufacture** [methamphetamine] [or] [insert name of controlled substance].

However, this evidence must be considered along with all the other evidence in the case and does not impose any duty upon you to find that _____ (Defendant) intended to manufacture [methamphetamine] [or] [insert name of controlled substance].

NOTE ON USE

Use with AMCI 2d 6416. If the controlled substance being manufactured is other than methamphetamine, the name of that substance should be inserted. It should be a controlled substance which is unlawful under Ark. Code Ann. § 5-64-1101 *et seq.*

COMMENT

Ark. Code Ann § 5-64-1101(b).

AMCI 2d 6417
UNLAWFUL SALE, TRANSFER, DISTRIBUTION, OR DISPENSATION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE

_____ *(Defendant)* **is charged with the offense of unlawful** [sale] [transfer] [distribution] [or] [dispensation] of [ephedrine] (pseudoephedrine] [phenylpropanolamine].

To sustain this charge the State must prove the following things beyond a reasonable doubt:

[That _____ *(Defendant)* (sold) (transferred) (distributed) (or) (dispensed) a product containing (ephedrine) (pseudoephedrine) (phenylpropanolamine) to another person with knowledge that the person would use the product as a precursor to manufacture (methamphetamine) (or) (insert name of controlled substance).]

[or]

[That _____ *(Defendant)* (sold), (transferred), (distributed) (or) (dispensed) a product containing (ephedrine) (pseudoephedrine) (phenylpropanolamine) with reckless disregard as to how the product would be used.]

Definitions

The terms "ephedrine," "pseudoephedrine," and "phenylpropanolamine," include their salts, optical isomers, and salts of optical isomers, alone or in a mixture. These terms mean any drug product containing ephedrine, pseudoephedrine or phenylpropanolamine or any of their salts, isomers, or salts of isomers, alone or in a mixture.

"Knowledge."—A person acts with knowledge with respect to circumstances existing at the time of his act, when he is aware that such circumstances exist.

"Precursor."—means the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of (methamphetamine) (or) (a controlled substance).

"Reckless."—A person acts with reckless disregard with respect to attendant circumstances or a result of his conduct when he consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

NOTE ON USE

The definitions, or appropriate excerpts, should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann § 5-64-1102(c).

The definition of "precursor" is based upon the definition of "immediate precursor" which is defined in Ark. Code Ann. § 5-64-101 (l). "Knowingly" and "recklessly" are defined in Ark. Code Ann § 5-2-202.

This offense is a Class D felony.

(Text continued on page 64-67)

AMCI 2d 6418

UNLAWFUL USE, POSSESSION, DELIVERY, OR MANUFACTURE OF DRUG PARAPHERNALIA
(Misdemeanor)

_____ *(Defendant)* **is charged with the offense of unlawfully** [using] [possessing with intent to use] [delivering] [possessing with intent to deliver][or] [manufacturing with intent to deliver] **drug paraphernalia.**

To sustain this charge, the State must prove beyond a reasonable doubt:

[_____ *(Defendant)* **knowingly** (used) (or) (possessed with intent to use) **drug paraphernalia to** (plant) (propagate) (cultivate) (grow) (harvest) (manufacture) (compound) (convert) (produce) (process) (prepare) (test) (analyze) (pack) (repack) (store) (contain) (conceal) ([inject] [ingest] [inhale] [or] [otherwise introduce] into the human body) _____(insert name of a controlled substance found in subchapters 1-6 of Chapter 64 (Ark. Code Ann § 5-64-101)]

[or]

[_____ *(Defendant)* (delivered) (possessed with intent to deliver) (or) (manufactured with intent to deliver) **drug paraphernalia** (knowing) (or) (under circumstances where one reasonably should have known) **that it would be used to** (plant) (propagate) (cultivate) (grow) (harvest) (manufacture) (compound) (convert) (produce) (process) (prepare)(test) (analyze) (pack) (repack) (store) (contain) (conceal) ([inject] [ingest] [inhale] [or] [otherwise introduce] into the human body) _____ (insert name of a controlled substance found in subchapters 1-6 of Chapter 64 (Ark. Code Ann § 5-64-101)]

Definitions

"Delivery." — of a controlled substance occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another, in exchange for money or anything of value.

"Drug paraphernalia."— means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting,

ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. *[The statutory definition continues with an extensive list of examples, and Ark. Code Ann. § 5-64-101(v) should be reviewed in formulating an appropriate instruction for a particular case.]*

"Knowingly."— A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Manufacture." — means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extracting from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container of the substance. Except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation or compounding or packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice or by a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

"Possession."—There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

NOTE ON USE

There are many possible pertinent definitions that are set out in AMCI 2d 6401 or in other instructions in Chapter 64. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Use appropriate Stage One and Two instructions, such as AMCI 2d 8101, 8301–VF, 9107, and 9307–VF.

If this offense is alleged to have been committed in the course of and in furtherance of a felony controlled substance violation, use AMCI 2d 6418.1.

COMMENT

Ark. Code Ann. § 5-64-403(c).

"Drug paraphernalia" is defined in Ark. Code Ann. § 5-64-101 (v). "Knowingly" is defined in Ark. Code Ann. § 5-2-202 (2). "Delivery" is defined in Ark. Code Ann. § 5-64-101 (f). *See* Comment to AMCI 2d 6404 for definition of "possession." The definition of "manufacture" is found in AMCI 2d 6401 and Ark. Code Ann. § 5-64-101(m).

This offense is a Class A misdemeanor. This offense committed in furtherance of a felony violation of the Uniform Controlled Substances Act (Ark. Code Ann § 5-64-101 through 5-64-608, as amended) is a Class C felony. *See* AMCI 2d 6418.1.

AMCI 2d 6418.1

DRUG PARAPHERNALIA
(Felony)

_____*(Defendant)* **is charged with the offense of unlawfully**[using] [possessing with intent to use] [delivering] [possessing with intent to deliver][or] [manufacturing with intent to deliver] **drug paraphernalia during the commission of** _____*(felony violation of the Uniform Controlled Substances Act).*

A. As a part of the charge, the State contends that _____ *(Defendant)* **committed** _____*(felony described above).*

To prove this offense, the State must prove beyond a reasonable doubt:

[insert appropriate elements from instruction on applicable offense]

B. Next, the State must prove beyond a reasonable doubt:

[_____ *(Defendant)* **knowingly** (used) (or) (possessed with intent to use) **drug paraphernalia to** (plant) (propagate) (cultivate) (grow) (harvest) (manufacture) (compound) (convert) (produce) (process) (prepare) (test) (analyze) (pack) (repack) (store) (contain) (conceal) ([inject] [ingest] [inhale] [or] [otherwise introduce] into the human body) _____ *(insert name of applicable controlled substance)* **in the course of and in furtherance of** _____ *(felony described above).*]

[or] [_____*(Defendant)* (delivered) (possessed with intent to deliver) (or) (manufactured with intent to deliver) **drug paraphernalia** (knowing) (or) (under circumstances where one reasonably should have known) **that it would be used to** (plant) (propagate) (cultivate) (grow) (harvest) (manufacture) (compound) (convert) (produce) (process) (prepare) (test) (analyze) (pack) (repack) (store) (contain) (conceal) ([inject] [ingest] [inhale] [or] [otherwise introduce] into the human body) _____*(insert name of applicable controlled substance)* **in the course of and in furtherance of** _____ *(felony described above).*]

Definitions

"Delivery." — of a controlled substance occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another, in exchange for money or anything of value.

"Drug paraphernalia." — means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. *[The statutory definition continues with an extensive list of examples, and Ark. Code Ann. § 5-64-101(v) should be reviewed in formulating an appropriate instruction for a particular case.]*

"Knowingly"— A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Manufacture." — means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extracting from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container of the substance. Except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation or compounding or packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice or by a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

"Possession."—There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

NOTE ON USE

There are many possible pertinent definitions that are set out in AMCI 2d 6401 or in other instructions in Chapter 64. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Use AMCI 2d 6418.1-EXP and 6418.1-VF if the State has alleged a violation of Ark. Code Ann. § 5-64-403 (c)(3) (delivery to a minor who is at least three years the defendant's junior). Otherwise, use appropriate Stage One and Two instructions.

Use AMCI 2d 6418.2 if the State has alleged a violation of Ark. Code Ann. § 5-64-403(c) (5) which provides that the use or the possession with intent to use drug paraphernalia to manufacture methamphetamine is a Class B felony.

COMMENT

Ark. Code Ann. § 5-64-403(c). This offense is a Class C felony; however, a violation of Ark. Code Ann. § 5-64-403 (c)(3), as discussed in the Note on Use, is a Class B felony.

"Drug paraphernalia" is defined in Ark. Code Ann. § 5-64-101 (v). "Knowingly" is defined in Ark. Code Ann. § 5-2-202 (2). "Delivery" is defined in Ark. Code Ann. § 5-64-101 (f). *See* Comment to AMCI 2d 6404 for definition of "possession." The definition of "manufacture" is found in AMCI 2d 6401 and Ark. Code Ann. § 5-64-101(m).

AMCI 2d 6418.1-EXP

DRUG PARAPHERNALIA — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find_____ *(defendant)* guilty of delivering drug paraphernalia during the commission of_____, *(felony violation of the Uniform Controlled Substances Act)* you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

Use this instruction only if a violation of Ark. Code Ann. § 5-64-403 (c)(3)(A) is alleged.

AMCI 2d 6418.1-VF

DRUG PARAPHERNALIA — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of delivering drug paraphernalia during the commission of _____. *(felony violation of the Uniform Controlled Substances Act).*

_____

FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall make the following additional findings:

(1) We, the Jury, find beyond a reasonable doubt that: _____*(defendant)* was age 18 or older at the time of the offense.

YES _____

NO _____

_____

FOREMAN

(2) The person to whom the drug paraphernalia was delivered was under the age of 18 and at least three years younger than _____ *(defendant)* at the time of the offense.

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

See Note on Use to AMCI 2d 6418.1-EXP.

COMMENT

Ark. Code Ann. § 5-64-403 (c)(3)(A). This offense is a Class B felony.

AMCI 2d 6418.2

POSSESSION OF DRUG PARAPHERNALIA WITH INTENT TO MANUFACTURE METHAMPHETAMINE

_____ *(Defendant)* **is charged with the offense of unlawfully possessing drug paraphernalia with the intent to manufacture methamphetamine.**

To sustain this charge, the State must prove beyond a reasonable doubt that:

_____*(Defendant)* **knowingly** (used) (or) (possessed with intent to use) **drug paraphernalia to manufacture methamphetamine**.

Definitions

"Drug paraphernalia." — means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. *[The statutory definition continues with an extensive list of examples, and Ark. Code Ann. § 5-64-101(v) should be reviewed in formulating an appropriate instruction for a particular case.]*

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Manufacture." — means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extracting from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container of the substance. Except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation or compounding or packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice or by a practitioner or by his authorized agent under his supervision for the

purpose of or as an incident to research, teaching or chemical analysis and not for sale.

"Possession." — There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

NOTE ON USE

The definitions, or appropriate excerpts, should be given when requested by counsel or when the court feels that they will be helpful to the jury.

This instruction applies to the offense of possession of drug paraphernalia with intent to manufacture methamphetamine.

Use AMCI 2d 6418 for related misdemeanor offenses and 6418.1 for related felony offenses.

Use AMCI 2d 9404 when the 70% rule is an issue.

COMMENT

Ark. Code Ann. § 5-64-403(c)(5).

"Drug Paraphernalia" is defined in Ark. Code Ann. § 5-64-101 (v). "Knowingly" is defined in Ark. Code Ann. § 5-2-202 (2). *See* Comment to AMCI 2d 6404 for definition of "possession." The definition of "manufacture" is found in AMCI 2d 6401 and Ark. Code Ann. § 5-64-101 (m).

The offense of possessing drug paraphernalia with intent to manufacture methamphetamine is a Class B felony and is subject to the 70% rule pursuant to Ark. Code Ann. § 16-93-611, *see* Note on Use above.

Ark. Code Ann. § 5-64-101 (v) contains a list of examples that should be reviewed in formulating an appropriate instruction for a particular case. The trial court did not err in refusing to give the defendant's proffered instruction where the defendant set out the entire list of items included in the statute and did not tailor them to the evidence in the case. *Cluck v. State*, 2005 WL 1349637 (June 8, 2005).

Possession of pseudoephedrine with intent to manufacture methamphetamine is not a lesser-included offense of possession of drug paraphernalia with intent to manufacture methamphetamine. *Autrey v. State,* 2005 WL 419352 (February 23, 2005).

Trial court did not err in refusing to give defendant's proffered instruction on the lesser-included offense of "attempted possession of drug paraphernalia with intent to manufacture methamphetamine" although evidence established that there was an incomplete set of ingredients and hardware necessary to manufacture the drug. *Cluck v. State,* 2005 WL 1349637 (June 8, 2005).

AMCI 2d 6418-PR

ATTEMPT TO MANUFACTURE METHAMPHETAMINE — PRESUMPTION

The [simultaneous possession of drug paraphernalia and drug precursors appropriate for use to manufacture methamphetamine] [or] [possession of drug paraphernalia appropriate for use to manufacture methamphetamine which tests positive for methamphetamine residue] **is evidence that** _____ *(defendant)* **engaged in conduct that constitutes a substantial step in a course of conduct intended to result in the manufacture of methamphetamine.**

However, this evidence must be considered along with all the other evidence in the case and does not impose any duty upon you to find that _____ *(defendant)* **attempted to manufacture methamphetamine.**

Definitions

"Drug paraphernalia." — means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. *[The statutory definition continues with an extensive list of examples, and Ark. Code Ann. § 5-64-101(v) should be reviewed in formulating an appropriate instruction for a particular case.]*

"Precursor." — means the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of methamphetamine.

NOTE ON USE

The definitions, or appropriate excerpts, should be given when requested by counsel or when the court feels that they will be helpful to the jury.

This instruction should be used with AMCI 2d 501.

COMMENT

Ark. Code Ann.§ 5-64-401 (g). "Drug paraphernalia" is defined in Ark. Code Ann. § 5-64-101 (v). The definition of "precursor" is based upon the definition of "immediate precursor" which is defined in Ark. Code Ann. § 5-64-101(l).

AMCI 2d 6419

USE OF A COMMUNICATION DEVICE

(Defendant) **is charged with the offense of use of a communication device in committing** (felony controlled substance offense). **To sustain this charge the State must prove the following:**

First: (Defendant) [committed] [attempted to commit] [solicited the commission of] [or] [conspired to commit] (insert name of the felony controlled substance offense.) **To prove this offense, the State must prove beyond a reasonable doubt that:**

[Insert appropriate elements from instruction on felony controlled substance offense]

Second: The State must also prove beyond a reasonable doubt that (Defendant) **knowingly used a communication device in** [committing] [attempting to commit] [soliciting the commission of] [or] [conspiring to commit] (insert name of the felony controlled substance offense set out in the First Element).

Definitions

"Communication Device" means any and all public and private instrumentalities used or useful in transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

"Knowingly" — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

A charge of use of a communication device committed in the course of one of the felonies specified in Ark. Code Ann § 5-64-404 (controlled substance offenses and related inchoate offenses) will require proof of that felony.

If the defendant is charged with one of the felony inchoate offenses specified in Ark. Code Ann § 5-64-404, instructions from AMCI 2d Chapter 5 should be given in the First Element.

Use this instruction in conjunction with AMCI 2d 8101 and 8301-VF.

COMMENT

Ark. Code Ann. § 5-64-404.

The felony inchoate offenses found in Ark. Code Ann § 5-3-101 *et seq.*, are attempt, solicitation, and conspiracy.

"Knowingly" is defined in Ark. Code Ann. § 5-2-202 (2). "Communication Device" is defined in Ark. Code Ann. § 5-64-404.

Each separate use of a communication device is a separate offense. *See* Ark. Code Ann § 5-64-404.

The offense of use of a communication device is a Class C felony.

(Text continued on page 64–87)

AMCI 2d 6420
SIMULTANEOUS POSSESSION OF DRUGS AND FIREARMS

_____ *(Defendant)* **is charged with the offense of simultaneous possession of drugs and firearms. To sustain this charge the State must prove the following:**

First: _____ *(Defendant)* [committed] [attempted to commit] [solicited the commission of] [or] [conspired to commit] _____ *(insert name of the felony controlled substance offense.)* **To prove this offense, the State must prove beyond a reasonable doubt that:**

_____ _____[*Insert appropriate elements from instruction on felony controlled substance offense*]

Second: The State must also prove beyond a reasonable doubt that _____*(Defendant)* [knowingly] [or] [intentionally] **possessed a (firearm) (or) (weapon) while** [committing] [attempting to commit] [soliciting the commission of] [or] [conspiring to commit] _____ _____ *(insert name of the felony controlled substance offense set out in the First Element).*

Definitions

"Firearm."—means any device designed, made, or adopted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Possession."—There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

"Serious physical injury."—means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

"Weapon."—means any implement or weapon which may be used to inflict serious physical injury or death, and which under the circumstances serves no apparent lawful purpose.

NOTE ON USE

A charge of simultaneous possession of a firearm or other weapon committed

in the course of one of the felonies specified in Ark. Code Ann. § 5-64-401 (repealed effective July 27, 2011) or § 5-64-419-442 (controlled substance offenses) will require proof of that felony.

If the defendant is charged with one of the felony inchoate offenses specified in Ark. Code Ann. § 5-64-417 (b), instructions from AMCI 2d Chapter 5 should be given in the First Element.

Use this instruction in conjunction with AMCI 2d 8101 and 8301-VF.

Use AMCI 2d 601 if the defense that the defendant was in his home and the firearm was not readily accessible for use is asserted.

COMMENT

Ark. Code Ann. § 5-74-106.

The felony inchoate offenses of attempt, solicitation, and conspiracy are found in Ark. Code Ann § 5-3-101 *et seq.*

"Knowingly" is defined in Ark. Code Ann. § 5-2-202(2). "Firearm" and "serious physical injury" are defined in Ark. Code Ann. § 5-1-12. "Weapon" is defined in Ark. Code Ann. § 5-74-106. *See* Comment to AMCI 2d 6404 for definition of "possession."

The offense of simultaneous possession is a Class Y felony.

From the evidence presented at appellant's trial, there was no basis from which the jury could conclude that appellant did not have firearms readily accessible for his use. Thus, the trial court did not abuse its discretion when it refused to give the affirmative defense jury instruction that is found at Ark. Code Ann. § 5-74-106 (d). *Cogburn v. State*, 2016 Ark. App. 543.

[Next Page is 64-91]

AMCI 2d 6421
EXPOSING A CHILD TO CHEMICAL SUBSTANCE

_____ *(Defendant)* **is charged with the offense of exposing a child to** (a chemical substance) (methamphetamine). **To sustain this charge the State must prove beyond a reasonable doubt:**

First: That _____ *(victim)* **was under the age of 18 years; and**

Second: That _____ *(defendant)* **with the intent to manufacture methamphetamine knowingly caused or permitted a child to be exposed to, ingest, inhale, or have contact with** (a chemical substance) (or) (methamphetamine); **and**

Third: That _____ *(defendant)* **was at least 18 years old at the time the incident occurred.**

Definitions

"Chemical substance."—means a substance intended to be used as a precursor in the manufacture of methamphetamine, or any other chemical intended to be used in the manufacture of methamphetamine.

"Child."—means any person under the age of eighteen (18) years.

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Manufacture."—means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extracting from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container of the substance. Except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation or compounding or packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice or by a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

"Precursor."—means the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of methamphetamine.

NOTE ON USE

If the exposure raises an issue of injury to the child, use AMCI 2d 6421-EXP and 6421-VF. Otherwise use AMCI 2d 8101, 8301-VF, 9104, and 9304-VF.

Other definitions which are found in the instructions contained in Chapter 64 may be warranted.

COMMENT

Ark. Code Ann. § 5-27-230. The definition of "chemical substance" is found in Ark. Code Ann. § 5-27-230 (a)(1)(A). The definition of "manufacture" is found in Ark. Code Ann. § 5-64-101(m) and AMCI 2d 6401. "Knowingly" is defined in Ark. Code Ann. § 5-2-202(2). The definition of "precursor" is based upon the definition of "immediate precursor" which is defined in Ark. Code Ann. § 5-64-101 (l).

The statute provides that intent may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or equipment used to manufacture methamphetamine. Ark. Code Ann. § 5-27-230 (a)(1)(B).

The offense is a Class C felony unless a child suffers physical injury, or serious physical injury because of the violation in which case the offense is a Class B felony.

AMCI 2d 6421-EXP
STAGE ONE—EXPOSING A CHILD TO CHEMICAL SUBSTANCE—INJURY TO CHILD

The State has alleged that _____ (defendant) committed the offense of exposing a child to a (chemical substance) (or) (methamphetamine).

If you find _____ (defendant) guilty of the offense of exposing a child to a (chemical substance) (or) (methamphetamine), **you will so indicate on the verdict form(s) provided you. You will also make a finding about whether the child suffered** (physical injury) (or) (serious physical injury) **when exposed to the** (chemical substance) (or) (methamphetamine). **If you reach a verdict of not guilty, you will indicate this on the form.**

NOTE ON USE

This instruction should be used in conjunction with AMCI 6421-VF when the defendant is charged with inflicting physical injury or serious physical injury on a child as a consequence of exposure to a chemical substance.

COMMENT

Ark. Code Ann. § 5-27-230.

AMCI 2d 6421-VF
STAGE ONE VERDICT FORM—EXPOSING A CHILD TO CHEMICAL SUBSTANCE—INJURY TO CHILD

We, the Jury, find beyond a reasonable doubt that _____ **(defendant) is guilty of exposing a child to** (a chemical substance) (or) (methamphetamine).

_____

FOREMAN

We, the Jury, find _____ **(defendant) not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ **(victim) suffered** (physical injury) (or) (serious physical injury) **when exposed to a** (chemical substance) (or) (methamphetamine)?

YES _____

NO _____

_____

FOREMAN

Definitions

"Physical injury."—means the impairment of physical condition, the infliction of substantial pain, or the infliction of bruising, swelling, or visible marks associated with physical trauma.

"Serious physical injury."—means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 6421-EXP.

If a verdict of guilty is returned and the question is answered in the affirmative, the defendant is guilty of a Class B felony and AMCI 2d 9103 AND 9303-VF should be used in Stage Two. If the question is answered in the negative, then the offense is a Class C felony and AMCI 2d 9104 and 9304 VF should be used.

COMMENT

Ark. Code Ann. § 5-27-230.

The definitions of "physical injury" and "serious physical injury" are found in Ark. Code Ann. § 5-1-102.

Chapter 64 Addendum
CONTROLLED SUBSTANCES UNDER ACT 570 OF 2011

INTRODUCTION

The instructions in this Addendum to Chapter 64 are to be used for the drug offenses created under Act 570 of 2011, which was effective July 27, 2011.

AMCI 2d 64.419
POSSESSION OF A CONTROLLED SUBSTANCE

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of possessing** [ ], **a controlled substance.**

To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That [ ] (defendant(s)) **possessed** [ ] *(insert applicable amount and name of substance, see Table in Note on Use)*, **a controlled substance**; **and**

Second: That [he] [they] **did so** [knowingly] [or] [purposely].

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definitions

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely."—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Information regarding the various controlled substances and amounts, by aggregate weight, including adulterants and dilutants, to be inserted in the instruction appear in the Table below.

If the case requires the jury to make a finding about the amount, then options should be added to the verdict form.

TABLE

[Methamphetamine or Cocaine]

(1) at least 10 grams but less than 200 grams

(2) at least 2 grams but less than 10 grams

(3) less than 2 grams

[Schedule I or II—NOT Methamphetamine or Cocaine]

(1) at least 28 grams but less than 200 grams

(2) at least 2 grams but less than 28 grams

(3) less than 2 grams

[Schedule III]

(1) at least 200 grams but less than 400 grams

(2) at least 28 grams but less than 200 grams

(3) at least 2 grams but less than 28 grams

(4) less than 2 grams

[Schedule IV, V]

(1) at least 400 grams but less than 800 grams

(2) at least 200 grams but less than 400 grams

(3) at least 28 grams but less than 200 grams

(4) less than 28 grams

[Schedule VI]

(1) at least 100 pounds but less than 500 pounds

(2) at least 25 pounds but less than 100 pounds

(3) at least 10 pounds but less than 25 pounds

(4) at least 4 ounces but less than 10 pounds

(5) less than 4 ounces

[(6) at least 1 ounce but less than 4 ounces]

NOTE: Option (6) under Schedule VI may be needed if a jury issue is presented regarding the amount when the defendant has four previous convictions under Ark. Code Ann. § 5-64-419 or former § 5-64-401(c) in which case the offense is stepped-up from a Class A misdemeanor to a Class D felony.

For Schedules III, IV, and V, a defendant convicted of possession of a controlled substance and the amount constitutes a Class A misdemeanor if the defendant has four or more prior convictions under Ark. Code Ann. § 5-64-419 or former § 5-64-401(c), the defendant is guilty of a Class D Felony.

Use verdict form in AMCI 2d 64.419-VF.

If a person possesses a controlled substance while an inmate in a state criminal detention facility, county criminal detention facility, city criminal detention facility, or juvenile detention facility, the penalty for the offense is increased to the next higher classification as prescribed by law for the offense. Use 6404-EXP and VF and modify as necessary.

COMMENT

Ark. Code Ann. § 5-64-419.

AMCI 2d 64.419-VF
POSSESSION OF CONTROLLED SUBSTANCE—STAGE ONE
VERDICT FORM

We, the Jury, find beyond a reasonable doubt that [ ] *(defendant)* is guilty of possession of

_____

[*insert the applicable amount*]

of _____ [*insert name of applicable controlled* substance].

_____

FOREMAN

We, the Jury, find [ ] (defendant) not guilty.

_____

FOREMAN

AMCI 2d 64.420
POSSESSION OF CONTROLLED SUBSTANCE WITH THE PURPOSE TO DELIVER

[Act 570]

_____ *(Defendant(s))* [is] [are] **charged with the offense of possessing** *[insert name of applicable controlled substance]* **with the purpose to deliver it. To sustain this charge the State must prove beyond a reasonable doubt:**

That _____ *(defendant(s))* **possessed** _____ *[insert applicable amount and name of substance, see Table in Note on Use]* **with the purpose to deliver it.**

"Purpose to deliver" may be shown by evidence that you find beyond a reasonable doubt proves _____'s (*Defendant's*) purpose was to deliver *[insert name of applicable controlled substance]*. Evidence which you may consider, along with all the other facts and circumstances of the case, include any of the following factors:

_____ *(Defendant)* possessed the means to weigh, separate, or package *[insert name of applicable controlled substance]*; or

_____ *(Defendant)* possessed a record indicating a drug-related transaction; or

The *[insert name of applicable controlled substance]* was separated and packaged in a manner to facilitate delivery; or

_____ *(Defendant)* possessed a firearm that was in *[his] [or] [her]* immediate physical control at the time of the possession of the _____ *[insert name of applicable controlled substance]*; or

_____ *(Defendant)* possessed at least two other controlled substances in any amount; or

Other evidence that contributes to prove that _____'s (*Defendant's*) purpose was to deliver _____ [*insert name of applicable controlled substance*].

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definitions

"Delivery"—occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another in exchange for money or anything of value.

"Purposely"—A person acts purposely with respect to his conduct or a result

thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

TABLE

[methamphetamine and cocaine]

(1) at least 10 grams but less than 200 grams

(2) at least 2 grams but less than 10 grams

(3) less than 2 grams

For other controlled substances, see AMCI 2d 64.425-TABLE

Use with verdict form in AMCI 2d 64.420-VF.

COMMENT

Ark. Code Ann. § 5-64-420 (methamphetamine and cocaine); Ark. Code Ann. § 5-64-424 (Schedule I and II controlled substances but not methamphetamine or cocaine); § 5-64-428 (Schedule III controlled substances); § 5-64-432 (Schedule IV and V controlled substances); and § 5-64-436 (Schedule VI controlled substances).

It is a defense for prosecutions related to Schedule I-V controlled substances that the defendant possessed less than the minimum listed amount of the controlled substance, but the defense is not found under § 5-64-436 (Schedule VI).

Because the model jury instruction that was given by the court was a correct statement of the law, the trial court did not abuse its discretion when it refused appellant's modified version of the instruction. *Pokatilov v. State*, 2017 Ark. App. 150.

(Text continued on page 64-105)

AMCI 2d 64.420-VF
POSSESSION OF A CONTROLLED SUBSTANCE WITH THE PURPOSE TO DELIVER—STAGE ONE VERDICT FORM

We, the Jury, find beyond a reasonable doubt that [ ] *(defendant)* is guilty of possession with the purpose to deliver

_____

[*insert the applicable amount*]

of _____ [*insert name of applicable controlled* substance].

_____

FOREMAN

We, the Jury, find [ ] *(defendant)* not guilty.

_____

FOREMAN

COMMENT

Ark Code Ann. § 5-64-420 (methamphetamine and cocaine); Ark. Code Ann. § 5-64-424 (Schedule I and II controlled substances but not methamphetamine or cocaine); § 5-64-428 (Schedule III controlled substances); § 5-64-432 (Schedule IV and V controlled substances); and § 5-64-436 (Schedule VI controlled substances).

AMCI 2d 64.421
DELIVERY OF CONTROLLED SUBSTANCE

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of delivering** *[insert name of applicable controlled substance]*. **To sustain this charge the State must prove beyond a reasonable doubt that:**

[ ] *(Defendant(s))* **knowingly or purposely delivered** *[insert applicable amount and name of substance, see Table in Note on Use].*

Definitions

"Delivery"—occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another, in exchange for money or anything of value.

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

TABLE

[methamphetamine or cocaine]

(1) at least 10 grams but less than 200 grams

(2) at least 2 grams but less than 10 grams

(3) less than 2 grams

For other controlled substances, see AMCI 2d 64.425-TABLE

Use with verdict form in AMCI 2d 64.421-VF.

COMMENT

Ark Code Ann. § 5-64-421 (methamphetamine and cocaine); Ark. Code Ann. § 5-64-426 (Schedule I and II controlled substances but not methamphetamine or cocaine); § 5-64-430 (Schedule III controlled substances); § 5-64-434 (Schedule IV and V controlled substances); and § 5-64-438 (Schedule VI controlled substances).

A conviction of Delivery of a Controlled Substance pursuant to § 5-64-438(b)(1)(A) or (B) (Schedule VI) is a class "A" misdemeanor unless the defendant has four or more prior convictions for Delivery of a Controlled Substance in any amount under the foregoing statutes or under the former

§ 5-64-401; it is then a class "D" felony.

(Text continued on page 64-109)

AMCI 2d 64.421-VF
DELIVERY OF CONTROLLED SUBSTANCE—STAGE ONE VERDICT FORM

We, the Jury, find beyond a reasonable doubt that [ ] *(defendant)* **is guilty of delivery of**

_____

[*insert the applicable amount*]

of _____ [*insert name of applicable controlled* substance].

_____

FOREMAN

We, the Jury, find [ ] *(defendant)* **not guilty.**

_____

FOREMAN

[In addition, you may be asked to make findings concerning the circumstances of the offense, as follows:

[(A) We, the Jury, find beyond a reasonable doubt

That [ ] (defendant(s)) [was] [were] **at least 18 years old at the time of the offense; and**

That the _____ (substance) **was delivered to** _____, **a minor who was under 18 years old and at least 3 years younger than** [ ] (defendant(s)) **at the time of the delivery]].**

YES _____

NO _____

_____

FOREMAN

[(B) That the substance was delivered to _____, a minor who was **under 18 years of age at the time of the delivery].**

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

NOTE: Bracketed paragraph A applies to prosecutions under Ark. Code Ann. § 5-64-406(a) or (b), permitting doubling the maximum prison term for delivering controlled substances to minors under the age of 18. *Compare* Note on Use to AMCI 2d 6409.

Bracketed paragraph B applies to prosecutions under Ark. Code Ann. § 5-64-406(c)—not meeting requirements of subsections (a) or (b)—providing for an additional 10-year imprisonment term for delivering to a minor. *Compare* Note on Use to AMCI 2d 6410.

COMMENT

Ark Code Ann. § 5-64-421 (methamphetamine and cocaine); Ark. Code Ann. § 5-64-426 (Schedule I and II controlled substances but not methamphetamine or cocaine); § 5-64-430 (Schedule III controlled substances); § 5-64-434 (Schedule IV and V controlled substances); and § 5-64-438 (Schedule VI controlled substances).

Ark. Code Ann. § 5-64-406 (enhancement for delivery to a minor).

AMCI 2d 64.423
MANUFACTURING CONTROLLED SUBSTANCE

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of manufacturing** *[insert name of applicable substance]*. **To sustain this charge the State must prove beyond a reasonable doubt that** [ ] *(defendant(s))* **knowingly or purposely:**

manufactured _____ *[insert applicable amount and name of substance, see Table in Note on Use].*

Definitions

"Manufacture" means

[(Planted) (or) (cultivated) (or) (grew) (or) (harvested) a controlled substance.]

[(Produced) (or) (prepared) (or) (propagated) (or) (compounded) (or) (converted) (or) (processed) a controlled substance [directly] [or] [indirectly] by extraction from substances of natural origin) (or) (by means of chemical synthesis) (or) (by a combination of extraction and chemical synthesis).]

[(Packaged) (or) (repackaged) a controlled substance.]

[(Labeled) (or) (relabeled) a container of a controlled substance.]

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

TABLE

[methamphetamine or cocaine]

[to be used with manufacture of methamphetamine]

(1) 2 grams or more

(2) less than 2 grams

[to be used with manufacturing of cocaine]

(1) at least 10 grams but less than 200 grams

(2) at least 2 grams but less than 10 grams

(3) less than 2 grams

For other controlled substances, see AMCI 2d 64.425-TABLE

Use with verdict form in AMCI 2d 64.423-VF.

Ark. Code Ann. § 5-64-423 provides that manufacture for personal use only of 2 grams or more of methamphetamine is a Class A felony rather than a Class Y felony. *See* AMCI 2d 64.423-VF.

COMMENT

Ark. Code Ann. § 5-64-423 (methamphetamine or cocaine); Ark. Code Ann. § 5-64-427 (Schedule I and II controlled substances but not methamphetamine or cocaine); § 5-64-431 (Schedule III controlled substances); § 5-64-435 (Schedule IV and V controlled substances); and § 5-64-439 (Schedule VI controlled substances).

Manufacture of 2 grams or more is a Class Y felony; however, if the defendant successfully shows that he manufactured only for personal use, the offense is a Class A felony.

A person who has one or more prior convictions of manufacturing methamphetamine in any amount under section 5-64-423 or the former section 5-64-401 upon conviction is guilty of a Class Y felony.

AMCI 2d 64.423-VF
MANUFACTURING OF CONTROLLED SUBSTANCE—STAGE ONE
VERDICT FORM

We, the Jury, find beyond a reasonable doubt that [ ] *(defendant)* is guilty of manufacturing

_____

[*insert the applicable amount*]

of _____ [*insert name of applicable controlled* substance].

_____

FOREMAN

We, the Jury, find [ ] *(defendant)* not guilty.

_____

FOREMAN

[If you find _____ *(defendant)* **guilty of manufacturing 2 or more grams of methamphetamine, you are asked to determine whether** _____ *(defendant)* **was manufacturing methamphetamine only for personal use.**

"Personal use" may be shown by evidence that you find proves _____ *(Defendant)* manufactured the methamphetamine for personal use only. Evidence which you may consider, along with all the other facts and circumstances of the case, include, without limitation, any of the following factors:

_____ *(Defendant)* did not make a delivery of methamphetamine; or

The quantity of methamphetamine manufactured by _____ *(defendant)*; or

The method of manufacturing used by _____ *(defendant).*

[ ] *(Defendant(s))* [has] [have] the burden of proving by a preponderance of the evidence that [he] [she], was manufacturing methamphetamine only for personal use, unless it is proved by other evidence in the case.

"Preponderance of the evidence" means the greater weight of the evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, then the fact has not been established.

We, the Jury, find by a preponderance of the evidence that [ ] *(defendant)* manufactured methamphetamine only for personal use.

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

Use the bracketed language if the defendant contends that he manufactured methamphetamine only for personal use. Manufacture of 2 grams or more of methamphetamine is a Class Y felony; however, if the defendant successfully shows that he manufactured only for personal use, the offense is a Class A felony. This option is not available if the defendant has one or more prior convictions of manufacturing methamphetamine in any amount under section 5-64-423 or the former section 5-64-401, and upon conviction, the defendant is guilty of a Class Y felony.

COMMENT

Ark. Code Ann. § 5-64-423 (methamphetamine or cocaine); Ark. Code Ann. § 5-64-427 (Schedule I and II controlled substances but not methamphetamine or cocaine); § 5-64-431 (Schedule III controlled substances); § 5-64-435 (Schedule IV and V controlled substances); and § 5-64-439 (Schedule VI controlled substances).

AMCI 2d 64.425-TABLE
CONTROLLED SUBSTANCES TABLE

[Act 570]

This Table is to be used with the following instructions for controlled substances other than methamphetamine and cocaine.

AMCI 2d 64.420 POSSESSION WITH THE PURPOSE TO DELIVER (SCHEDULE I, II, III, IV, V, VI)

AMCI 2d 64.421 DELIVERY (SCHEDULE I, II, III, IV, V, VI)

AMCI 2d 64.423 MANUFACTURING (SCHEDULE I, II, III, IV, V, VI)

Information regarding the various controlled substances and amounts, by aggregate weight, including adulterants and dilutants, to be inserted in the instruction appear in the Table below.

If the case requires the jury to make a finding about the amount, then options should be added to the verdict form.

Schedule I or II not methamphetamine or cocaine

All controlled substances except those listed below

Possession with the purpose to deliver (5-64-424) (Class A, B, C felonies)

(1) At least 28 grams but less than 200 grams.

(2) At least 2 grams but less than 28 grams.

(3) Less than 2 grams.

Delivery (5-64-426) (Class A, B, C felonies)

(1) At least 28 grams but less than 200 grams.

(2) At least 2 grams but less than 28 grams.

(3) Less than 2 grams.

Manufacture (5-64-427) (Class A, B, C felonies)

(1) 28 grams or more.

(2) At least 2 grams but less than 28 grams.

(3) Less than 2 grams.

Hydromorphone Hydrochloride

Possession with the purpose to deliver (5-64-424) (Class A, B felonies)

(1) At least 128 mg or 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units.

Delivery (5-64-426) (Class A, B felonies)

(1) At least 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units.

Manufacture (5-64-427) (Class A, B felonies)

(1) 160 dosage units or more.

(2) At least 80 dosage units but less than 160 dosage units.

Lysergic Acid Diethylamide

Possession with the purpose to deliver (5-64-424) (Class A, B felonies)

(1) At least 1600 micrograms or 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units.

Delivery (5-64-426) (Class A, B felonies)

(1) At least 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units.

Manufacture (5-64-427) (Class A, B felonies)

(1) 160 dosage units or more.

(2) At least 80 dosage units but less than 160 dosage units.

Depressant or Hallucinogenic Drug

Possession with the purpose to deliver (5-64-424) (Class A, B felonies)

(1) At least 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units (but no more than 200 grams).

Delivery (5-64-426) (Class A, B felonies)

(1) At least 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units (but no more than 200 grams).

Manufacture (5-64-427) (Class A, B felonies)

(1) 160 dosage units or more.

(2) At least 80 dosage units but less than 160 dosage units.

Stimulant Drug

Possession with the purpose to deliver (5-64-424) (Class A, B felonies)

(1) At least 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units (but no more than 200 grams).

Delivery (5-64-426) (Class A, B felonies)

(1) At least 160 dosage units but less than 200 grams.

(2) At least 80 dosage units but less than 160 dosage units (but no more than 200 grams).

Manufacture (5-64-427) (Class A, B felonies)

(1) 160 dosage units or more.

(2) At least 80 dosage units but less than 160 dosage units.

Schedule III

All controlled substances except those listed below

Possession with the purpose to deliver (5-64-428) (Class A, B, C felonies)

(1) At least 200 grams but less than 400 grams.

(2) At least 28 grams but less than 200 grams.

(3) Less than 28 grams.

Delivery (5-64-430) (Class A, B, C felonies)

(1) At least 200 grams but less than 400 grams.

(2) At least 28 grams but less than 200 grams.

(3) Less than 28 grams.

Manufacture (5-64-431) (Class A, B, C felonies)

(1) 200 grams or more.

(2) At least 28 grams but less than 200 grams.

(3) Less than 28 grams.

Depressant or Hallucinogenic Drug

Possession with the purpose to deliver (5-64-428) (Class A, B, C felonies)

(1) 160 dosage units or more.

(2) At least 80 dosage units but less than 160 dosage units.

(3) Less than 80 dosage units.

Delivery (5-64-430)

N/A

Manufacture (5-64-431)

N/A

Stimulant Drug

Possession with the purpose to deliver (5-64-428) (Class A, B, C felonies)

(1) 160 dosage units or more.

(2) At least 80 dosage units but less than 160 dosage units.

(3) Less than 80 dosage units.

Delivery (5-64-430)

N/A

Manufacture (5-64-431)

N/A

Schedule IV or V

All controlled substances except those listed below

Possession with the purpose to deliver (5-64-432) (Class B, C, D felonies)

(1) At least 400 grams but less than 800 grams.

(2) At least 200 grams but less than 400 grams.

(3) Less than 200 grams.

Delivery (5-64-434) (Class B, C, D felonies)

(1) At least 400 grams but less than 800 grams.

(2) At least 200 grams but less than 400 grams.

(3) Less than 200 grams.

Manufacture (5-64-435) (Class B, C, D felonies)

(1) 400 grams or more.

(2) At least 200 grams but less than 400 grams.

(3) Less than 200 grams.

Depressant or Hallucinogenic Drug

Possession with the purpose to deliver (5-64-432) (Class B, C, D felonies)

(1) At least 160 dosage units but less than 800 grams.

(2) At least 80 dosage units but less than 160 dosage units.

(3) Less than 80 dosage units.

Delivery (5-64-434)

N/A

Manufacture (5-64-435)

N/A

Stimulant Drug

Possession with the purpose to deliver (5-64-432) (Class B, C, D felonies)

(1) At least 160 dosage units but less than 800 grams.

(2) At least 80 dosage units but less than 160 dosage units.

(3) Less than 80 dosage units.

Delivery (5-64-434)

N/A

Manufacture (5-64-435)

N/A

Schedule VI

All controlled substances

Possession with the purpose to deliver (5-64-436)

(Class A, B, C, D felonies, Class A Misd.)

(1) At least 100 pounds but less than 500 pounds.

(2) At least 25 pounds but less than 100 pounds.

(3) At least 4 ounces but less than 25 pounds.

(4) More than 14 grams but less than 4 ounces.

(5) 14 grams or less.

Delivery (5-64-438)

(Class A, B, C, D felonies, Class A Misd.)

(1) At least 100 pounds but less than 500 pounds.

(2) At least 25 pounds but less than 100 pounds.

(3) At least 4 ounces but less than 25 pounds.

(4) More than 14 grams but less than 4 ounces.

(5) 14 grams or less.

Manufacture (5-64-439)

(Class A, B, C, D felonies, Class A Misd.)

(1) 100 pounds or more.

(2) At least 25 pounds but less than 100 pounds.

(3) At least 4 ounces but less than 25 pounds.

(4) More than 14 grams but less than 4 ounces.

(5) 14 grams or less.

AMCI 2d 64.440
TRAFFICKING A CONTROLLED SUBSTANCE

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of trafficking** [ ] (*insert name of applicable controlled substance*). **To sustain this charge the State must prove beyond a reasonable doubt:**

First: That [ ] *(Defendant(s))* [**possessed more than** _____ [grams] [or] [pounds] *[insert applicable amount from information in Note on Use]* **by aggregate weight** (including an adulterant or diluent)]

[**possessed with the purpose to deliver more than** _____ [grams] [or] [pounds] [*insert applicable amount from information in Note on Use*] **by aggregate weight** (including an adulterant or diluent)]

[**delivered more than** _____ [grams] [or] [pounds] [*insert applicable amount from information in Note on Use*] **by aggregate weight** (including an adulterant or diluent)]

[**manufactured more than** _____ [grams] [or] [pounds] [*insert applicable amount from information in Note on Use*] **by aggregate weight** (including an adulterant or diluent)]

of _____ *[insert applicable substance from information in Note on Use]*; **and**

Second: That [he, she, they] did so [knowingly] or [purposely].

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definitions

"Delivery."—of a controlled substance occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another, in exchange for money or anything of value.

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Manufacture."—means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extracting from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the

container of the substance. Except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation or compounding or packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice or by a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Amounts and Substances for insertion in Instruction

[(Methamphetamine) (or) (cocaine), 200 grams (200g) or more]

[_____ (name of Schedule I or Schedule II controlled substance that is not methamphetamine or cocaine), 200 grams (200g) or more]

[_____ (name of Schedule III controlled substance), 400 grams (400g) or more]

[_____ (name of Schedule IV or Schedule V controlled substance), 800 grams (800g) or more]

[_____ (name of Schedule VI controlled substance), 500 pounds (500 lbs.) or more].

Possession with the purpose to deliver was added to trafficking in Act 529 of 2013, section 4, and the legislation did not include the factors to be considered. *Compare* section 5 of Act 529 which lists the factors with respect to Ark. Code Ann. § 5-64-442 and Ark. Code Ann. § 5-64-420. The committee has followed Act 529 and has not included the factors in this instruction.

COMMENT

Ark. Code Ann. Section 5-64-440. Trafficking a controlled substance is a Class Y felony.

AMCI 2d 64.441
POSSESSION OF A COUNTERFEIT SUBSTANCE

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of unlawfully possessing [ ], a counterfeit substance.**

To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That [ ] *(defendant(s))* **possessed** [ ], a counterfeit substance; **and**

Second: That [he] [they] **did so** [knowingly] [or] [purposely].

[There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definitions

A "counterfeit substance" is a non-controlled substance which (by overall dosage unit appearance including color, shape, size, markings, packaging and labeling) (or) (upon the basis of representations made to the recipient) purports to (be) (have the physical or psychological effect associated with) a controlled substance.

"Controlled substance"—means a drug, substance, or immediate precursor in Schedule I through VI of the Schedules of Controlled Substances promulgated by the Director of the Department of Health of the Department of Health and Human Services.

"Noncontrolled substance"—means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the Director of the Department of Health and Human Services.

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

See Ark. Code Ann. § 5-4-101(6) for definition of counterfeit substance and factors to be considered; additional instructions may be necessary.

Modify AMCI 6404-D when the defense maintains that the counterfeit

substance was obtained: (1) directly from or pursuant to a valid prescription or an order of a practitioner while acting in the course of his or her professional practice; or (2) as otherwise authorized.

COMMENT

Ark. Code Ann. § 5-64-441. Counterfeit substance is defined in Ark. Code Ann. § 5-4-101(6). "Controlled" and "noncontrolled substances" are defined in Ark. Code Ann. § 5-64-101.

A conviction with respect to a Schedule I or Schedule II controlled substance is a Class D felony; any other controlled substance, first offense or second offense is a Class A misdemeanor; and any other controlled substance, third or subsequent offense, is a Class D felony.

An offense is considered a third or subsequent offense if, before his or her conviction for the offense, the person has been convicted two or more times for the offense or under any equivalent penal statute of the United States or of any state.

AMCI 2d 64.442
POSSESSION WITH THE PURPOSE TO DELIVER, DELIVERY, OR MANUFACTURING OF A COUNTERFEIT SUBSTANCE

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of** [possessing with the purpose to deliver] [manufacturing] [or] [delivering] **a counterfeit substance. To sustain this charge the State must prove beyond a reasonable doubt that** [] *(defendant(s))* **knowingly or purposely:**

[possessed with the purpose to deliver] [manufactured] [or] [delivered] _____, a counterfeit substance.

["Purpose to deliver" may be shown by evidence that you find beyond a reasonable doubt proves _____ 's *(Defendant's)* purpose was to deliver a counterfeit substance. Evidence which you may consider, along with all the other facts and circumstances of the case, include any of the following factors:

_____ *(Defendant)* possessed the means to weigh, separate, or package a counterfeit substance; or

_____ *(Defendant)* possessed a record indicating a drug-related transaction; or

The counterfeit substance was separated and packaged in a manner to facilitate delivery; or

_____ *(Defendant)* possessed a firearm that was in *[his] [or] [her]* immediate physical control at the time of the possession of the counterfeit substance; or

_____ *(Defendant)* possessed at least two other controlled substances or counterfeit substances in any amount; or

Other evidence that contributes to prove that _____'s *(Defendant's) purpose was to deliver a counterfeit substance.*]

[**There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons**. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)]

Definition

A counterfeit substance is a non-controlled substance which (by overall dosage unit appearance including color, shape, size, markings, packaging and labeling) (or) (upon the basis of representations made to the recipient) purports to (be) (have the physical or psychological effect associated with) a controlled substance.

"Controlled substance"—means a drug, substance, or immediate precursor in Schedule I through VI of the Schedules of Controlled Substances promulgated by

the Director of the Department of Health and Human Services.

"Noncontrolled substance"—means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the Director of the Department of Health and Human Services.

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Delivery"—occurs whenever there is an actual (or constructive) or attempted transfer of the substance from one person to another, in exchange for money or anything of value.

"Manufactured" means

[(Planted) (or) (cultivated) (or) (grew) (or) (harvested) a counterfeit substance).

[(Produced) (or) (prepared) (or) (propagated) (or) (compounded) (or) (converted) (or) (processed) a counterfeit substance ([directly] [or] [indirectly] by extraction from substances of natural origin) (or) (by means of chemical synthesis) (or) (by a combination of extraction and chemical synthesis.)]

[(Packaged) (or) (repackaged) a counterfeit substance.]

(Labeled) (or) (relabeled) a container of a counterfeit substance.]

[Except that "manufacturing" does not include the preparation or compounding of a substance by an individual for his own use.]

COMMENT

Ark. Code Ann. § 5-64-442. Counterfeit substance is defined in Ark. Code Ann. § 5-4-101 (6).

A conviction for this offense with respect to: (1) A counterfeit substance purporting to be a Schedule I or Schedule II controlled substance is a Class C felony; (2) A counterfeit substance purporting to be a Schedule III controlled substance is a Class D felony; or (3) A counterfeit substance purporting to be a Schedule IV-VI controlled substance or that is not classified as a scheduled controlled substance is a Class A misdemeanor.

(Text continued on page 64-127)

AMCI 2d 64.443
DRUG PARAPHERNALIA

[Act 570]

_____ *(Defendant)* **is charged with the offense of** *[possessing drug paraphernalia with the purpose to use drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance] [using or possessing with the purpose to use drug paraphernalia to manufacture a controlled substance].* **To prove this offense, the State must prove beyond a reasonable doubt:**

[**That** _____ *(defendant)* **possessed drug paraphernalia with the purpose to use drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body** _____ *(insert name of applicable substance),* **a controlled substance.**]

[**That** _____ *(defendant)* **used or possessed with the purpose to use drug paraphernalia to** (plant) (propagate) (cultivate) (grow) (harvest) (manufacture) (compound) (convert) (produce) (process) (prepare) (test) (analyze) (pack) (repack) _____ *(insert name of applicable substance).*]

[**That** _____ *(defendant)* **used or possessed with the purpose to use drug paraphernalia to** (store) (contain) (conceal) _____ *(insert name of applicable substance).*]

Definitions

"Drug paraphernalia"—means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. *[The statutory definition continues with an extensive list of examples, and Ark. Code Ann. § 5-64-101(v) should be reviewed in formulating an appropriate instruction for a particular case.]*

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Possession"—There are two kinds of possessions, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

"Purposely"—A person acts purposely with respect to his conduct or a result

thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

There are many possible pertinent definitions that are set out in AMCI 2d 6401 or in other instructions in Chapter 64. Appropriate definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Refer to AMCI 2d 6418.1, 6418.1-EXP and 6418.1-VF if the State has alleged a violation of Ark. Code Ann. § 5-64-444(a) (felony violation and delivery to a minor who is at least three years the defendant's junior), or AMCI 2d 6418 [second bracketed paragraph] in the non-felony situation.

COMMENT

Ark. Code Ann. § 5-64-443. This offense of possession with purpose to introduce into the human body is a Class A misdemeanor unless the substance is methamphetamine, heroin, fentanyl, or cocaine in which case it is a Class D felony. A conviction in connection with the second bracketed offense is a Class D felony unless the substance is methamphetamine, heroin, fentanyl, or cocaine in which case it is a Class B felony. A conviction in connection with the third bracketed offense is a Class D felony if the substance is methamphetamine, heroin, fentanyl, or cocaine; otherwise it is a Class A misdemeanor.

Ark. Code Ann. § 5-64-444 (delivery of drug paraphernalia to a minor).

"Drug paraphernalia" is defined in Ark. Code Ann. § 5-64-101(v). "Knowingly" is defined in Ark. Code Ann. § 5-2-202(2). See Comment to AMCI 2d 6404 for definition of "possession."

(Text continued on page 64-129)

AMCI 2d 64.444
DRUG PREMISES

[Act 570]

[ ] (Defendant(s)) [is] [are] **charged with the offense of** [refusing entry to inspect] [maintaining drug premises]. **To sustain this charge the State must prove the following things beyond a reasonable doubt:**

[That _____ (defendant(s)) refused entry into any premises for an inspection.]

[or]

[That _____ (defendant(s)) knowingly kept or maintained a store, shop, warehouse, dwelling, building, or other structure or place or premise that was used for keeping a controlled substance.]

[or]

[First, that, _____ (defendant(s)) knowingly kept or maintained a store, shop, warehouse, dwelling, building, or other structure or place or premise; and

Second, that another person(s) resorted to it for the purpose of using or obtaining a controlled substance.]

Definitions

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely"—A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

Ark. Code Ann. § 5-64-402(a)(1) makes it unlawful to refuse entry into any premises for an inspection authorized by Chapter 64. Such premises may include those described in Ark. Code Ann. §§ 5-64-501 *et seq.*, and 701 *et seq.*

COMMENT

Ark. Code Ann. § 5-64-402.

A conviction is a Class C felony. However, it is a Class B felony if committed on or within 1000 feet of the real property of a certified drug-free zone.

AMCI 2d 64.444-EXP
STAGE ONE—DRUG PREMISES IN PROXIMITY TO CERTIFIED DRUG FREE ZONE

If you find *(defendant)* **guilty of the offense of** [refusing entry to inspect] [maintaining drug premises], **you will so indicate on the verdict form provided to you. You will also make a finding about the circumstances of the offense as directed on the form.**

If you reach a verdict of not guilty, you will indicate this on the form.

AMCI 2d 64.444-VF
STAGE ONE—DRUG PREMISES IN PROXIMITY TO CERTIFIED DRUG FREE ZONE

We, the Jury, find beyond a reasonable doubt that [ ] *(defendant)* **is guilty of the offense of** [refusing entry to inspect] [maintaining drug premises].

_____

FOREMAN

We, the Jury, find [ ] *(defendant)* **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ *(defendant)* **committed the offense within 1000 feet of**

[a city or state park]

[a public or private elementary or secondary school, public vocational school, or private or public college or university]

[a designated school bus stop]

[a publicly funded and administered multifamily housing development]

[a skating rink, Boys Club, Girls Club, YMCA, YWCA, or community or recreation center or video arcade]

[a drug or alcohol treatment facility]

[a day care center]

[a church] [or]

[a domestic abuse shelter]?

YES _____

NO _____

_____

FOREMAN

Definitions

"Recreation center" means a public place consisting of various types of entertainment, including, but not limited to, billiards or pool, ping pong or table tennis, bowling, video games, pinball machines, or any other similar type of entertainment.

"Shelter" means any entity that: (A) Provides services including food, housing, advice, counseling, and assistance to victims of domestic abuse and their minor

dependent children in this state; and (B) Meets the program, fiscal, and training requirements of the law.

NOTE ON USE

The statutory language regarding "a designated school bus stop" includes "as identified on the route list published by a public school district each year." If a jury issue is presented by this language, then the instruction should be modified.

COMMENT

Ark. Code Ann. § 5-4-402. "Recreation center" is defined in § 5-64-402. "Shelter" is defined in § 9-4-102.

AMCI 2d 64.445
ADVERTISING A COUNTERFEIT SUBSTANCE OR DRUG PARAPHERNALIA

[Act 570]

[ ] *(Defendant(s))* [is] [are] **charged with the offense of advertising** [a counterfeit substance] [or] [drug paraphernalia].

To sustain this charge the State must prove beyond a reasonable doubt that [ ] *(defendant(s))* **knowingly or purposely:**

placed in a newspaper, magazine, handbill, or other publication an advertisement knowing, or under circumstances in which a person reasonably should know, that the purpose of the advertisement, in whole or in part, was to promote the sale of [a counterfeit substance] [or] [an object designed or intended for use as drug paraphernalia].

Definitions

A "counterfeit substance" is a non-controlled substance which (by overall dosage unit appearance including color, shape, size, markings, packaging and labeling) (or) (upon the basis of representations made to the recipient) purports to (be) (have the physical or psychological effect associated with) a controlled substance.

"Controlled substance"—means a drug, substance, or immediate precursor in Schedule I through VI of the Schedules of Controlled Substances promulgated by the Director of the Department of Health and Human Services.

"Noncontrolled substance"—means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the Director of the Department of Health and Human Services.

"Drug paraphernalia"—means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. *[The statutory definition continues with an extensive list of examples, and Ark. Code Ann. § 5-64-101(v) should be reviewed in formulating an appropriate instruction for a particular case.]*

"Knowingly"—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Possession"—There are two kinds of possession, actual and constructive. Actual possession of a thing is direct physical control over it. Constructive

possession exists when a person, although not in actual possession of a thing, has the right to control it and intends to do so, either directly or through another person or persons. (If two or more persons share actual or constructive possession of a thing, either [or both] may be found to be in possession.)

COMMENT

Ark. Code Ann. § 5-64-445. This offense is a Class C felony.

CHAPTER 65

DRIVING WHILE INTOXICATED

SYNOPSIS

6501. Driving or Boating While Intoxicated

6502-AD. Affirmative Defense to Driving or Boating While Intoxicated with Child Passenger

6502-EXP. Stage One—Driving or Boating While Intoxicated With Child Passenger

6502–VF. Stage One Verdict Form—Driving or Boating While Intoxicated with Child Passenger

AMCI 2d 6501
DRIVING OR BOATING WHILE INTOXICATED

_____ *(Defendant)* **is charged with the offense of**

[driving] [or] [boating] **while intoxicated. To sustain this charge the** [State] [City] **must prove beyond a reasonable doubt that** _____ *(defendant)*

[, while intoxicated, (operated) (or) (was in actual physical control of) (a motor vehicle) (or) (a motorboat on the waters of this state).]

[or]

[(operated) (or) (was in actual physical control) of (a motor vehicle) (or) (a motorboat on the waters of this state) while the alcohol concentration in his/her (breath) (or) (blood) was eight-hundredths (0.08) or more as determined by a chemical test of his/her (blood) (urine) (breath) _____ *(other bodily substance)*].

Definitions

"Alcohol concentration"—means (grams of alcohol per one hundred (100) milliliters, or cubic centimeters, of blood) (or) (grams of alcohol per two hundred ten (210) liters of breath). (The alcohol concentration of urine, saliva, or other bodily substances shall be based upon grams of alcohol per one hundred (100) milliliters, or cubic centimeters, of blood, the same being percent weight per volume or percent alcohol concentration.)

"Chemical test"—is one that analyzes a person's [blood] [urine] [saliva] [breath] [or] [other bodily substance] for determining the alcohol content in the blood or breath. The test and the methods by which it is performed must be approved by the Arkansas State Department of Health, or the test must be made by the State Crime Laboratory or be given by a person possessing a valid permit to administer it.

"Controlled substance"—means a drug, substance, or immediate precursor in Schedules I–VI established by Ark. Code Ann. §§ 5-64-101 et seq.

"Intoxicated"—means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such a degree that the driver's reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself or herself or another person.

"Motorboat" means any vessel operated upon water and that is propelled by machinery, whether or not the machinery is the principal source of propulsion. "Motorboat" includes personal watercraft. "Personal watercraft" means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel.

"Motor vehicle" means a self-propelled, motorized vehicle capable of being operated on a roadway upon or in which a person or property is or may be transported or drawn upon a public or private road or public or private land.

"Motor vehicle" includes without limitation: (i) An all-terrain vehicle; and (ii) A vehicle designed to be used for agricultural purposes, such as a tractor.

"Motor vehicle" does not include: (i) A motor vehicle designed to assist a person with a physical disability with walking; (ii) A motorized scooter or other vehicle designed to be used as a toy by a child; (iii) A bicycle equipped with a small motor designed 24 to assist the bicycle operator and that is not operated at a speed of greater than twenty miles per hour (20 m.p.h.); (iv) A riding lawnmower that is not operated on a public roadway; (v) An electric personal assistive mobility device that is designed to not be capable of a speed of more than twenty miles per hour (20 m.p.h.); or (vi) A device moved by human power or used exclusively upon stationary rails or tracks.

"Waters of this state" means any public waters within the territorial limits of the State of Arkansas.

NOTE ON USE

In first offense cases, use this instruction in conjunction with AMCI 2d 8101 and 8301-VF in Stage One and, in Stage Two, with 9107.1 and 9307.1-VF. If the defendant is charged with having previously been convicted of driving or boating while intoxicated, use AMCI 2d 6501, 8101, and 8301-VF in Stage One and, in Stage Two, AMCI 2d 9201.4 and 9315-VF.

In 2003, Act 1461 amended Ark. Code Ann. § 5-65-111 to enhance the punishment for driving or boating while intoxicated when the offense is committed with a child passenger in the vehicle. Use AMCI 2d 8101, 6502-EXP and 6502-VF in Stage One when this enhancement issue is presented.

The definition of "chemical test" should be given when requested by counsel or when there is an issue as to the validity of the test. The definition of "intoxicated" should be given in every trial in which the first bracketed alternative is used.

Intoxication by alcohol is a strict liability offense, and no culpable mental state is required. *See* Act of May 29, 2015, No. 6, 2015 Ark. Acts, discussed in Comment. A culpable mental state is required for non-alcohol related offenses, and AMCI 2d 602 should be used in those instances.

COMMENT

Ark. Code Ann. § 5-65-103. "Intoxicated" is defined in Ark. Code Ann. § 5-65-102(2). The definition of "controlled substance" is taken from Ark. Code Ann. § 5-65-102(1). The definitions of "alcohol concentration" and "chemical test" are taken from Ark. Code Ann. § 5-65-204. "Motorboat" and "waters of this state" are defined in Ark. Code Ann. § 5-65-102(5) and (9), respectively. "Personal watercraft" is defined in Ark. Code Ann. § 27-101-103.

"Motor vehicle" is defined in section 5-65-102 (10), and if a definition of an

"all-terrain vehicle" is needed, one can be found in section 27-21-102.

The Committee chose not to define the term "actual physical control" absent a statutory definition. Several cases have addressed whether the defendant was in actual physical control of the vehicle at the time of the offense. *See, e.g., Roberts v. State,* 287 Ark. 451, 701 S.W.2d 112 (1985) and *Wiyott v. State*, 284 Ark. 399, 683 S.W.2d 220 (1985) (control found because keys in the ignition); *but see, Dowell v. State,* 283 Ark. 161, 671 S.W.2d 740 (1984) (no control because keys were found on car seat); *Azbill v. State*, 285 Ark. 98, 685 S.W.2d 162 (1985) (control found when driver, although outside the truck, admitted that he had come from another city and there was no one else around the vehicle). However, definitional instructions may constitute reversible error if they are deemed to comment upon the evidence, or are considered binding instructions. *See Hodge v. State*, 27 Ark. App. 93, 766 S.W.2d 619 (1989) (fact that circumstances support a finding of actual physical control does not justify an instruction mandating that the jury make such a finding).

The fact that the defendant's intoxication was attributable to his taking a drug for which he had a prescription is not a defense to driving while intoxicated. Ark. Code Ann. § 5-65-102(2).

Trial court did not abuse its discretion in rejecting defendant's proffered non-AMCI instructions that omitted any mention of chemical tests even though Ark. Code Ann. 5-65-103 was amended in 2011 to eliminate the phrase "as determined by a chemical test," language that is included in AMCI 2d 6501. The proffered non-AMI instructions failed to take into account Ark. Code Ann. 5-65-103's incorporation of 5-65-204 which describes "the chemical analysis of a person's blood, urine, or breath." The model instruction represented a more accurate reflection of the law. *Graham v. State*, 2012 Ark. App. 90, 389 S.W.3d 33.

In *Leeka v. State*, 2015 Ark. 183, 461 S.W.3d 331, the supreme court held that Ark. Code Ann. Section 5-65-103 required a culpable mental state, which pursuant to section 5-2-203(b), is purposely, knowingly, or recklessly. In response to this decision, the General Assembly made alcohol-related offenses under section 5-65-103 a strict liability offense requiring no culpable mental state. Act of May 29, 2015, No. 6, 2015 Ark. Acts. For non-alcohol related offenses, a culpable mental state must be proved.

AMCI 2d 6502-AD
AFFIRMATIVE DEFENSE TO DRIVING OR BOATING WHILE INTOXICATED WITH CHILD PASSENGER

That _____ *(defendant)* was not more than two years older than _____ (child passenger).

NOTE ON USE

Use with AMCI 2d 6502-EXP and 6502-VF when the State seeks an enhanced punishment for driving or boating while intoxicated when a passenger under the age of 16 years is in the vehicle or motorboat.

This instruction should be given in the format of AMCI 2d 601 when the evidence justifies its use.

COMMENT

Ark. Code Ann. § 5-65-111(i).

AMCI 2d 6502-EXP
STAGE ONE—DRIVING OR BOATING WHILE INTOXICATED WITH CHILD PASSENGER

The State has alleged that _____ *(defendant)* committed the offense of (driving) (or) (boating) while intoxicated with a passenger under sixteen years of age in the (vehicle) (or) (motorboat). To sustain this allegation the State must prove beyond a reasonable doubt that _____ *(defendant)* committed the offense of (driving) (or) (boating) while intoxicated.

If you find _____ *(defendant)* guilty of the offense of (driving) (or) (boating) while intoxicated, you will so indicate on the verdict form(s) provided you. You will also make a finding about whether _____ *(defendant)* committed the offense with a passenger under sixteen years in the (vehicle) (or) (motorboat). If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 6502-VF when the defendant is charged with driving or boating while intoxicated with a passenger under sixteen years in the vehicle or motorboat. Ark. Code Ann. § 5-65-111(a), (b), (c), (d), and (e).

Use AMCI 2d 6502-AD when the defendant asserts the affirmative defense that he is no more than two years older than the passenger. Ark. Code Ann. § 5-65-111(i).

COMMENT

Ark. Code Ann. § 5-65-111 provides for enhanced punishment when the offense of driving or boating while intoxicated is committed with a passenger under the age of sixteen in the vehicle or motorboat.

AMCI 2d 6502-VF
STAGE ONE VERDICT FORM—DRIVING OR BOATING WHILE INTOXICATED WITH CHILD PASSENGER

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of (driving) (or) (boating) while intoxicated.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ *(defendant)* committed the offense of (driving) (or) (boating) while intoxicated with a passenger under the age of sixteen years in the (vehicle) (or) (motorboat)?

YES _____

NO _____

_____
FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 6502-EXP.

If a verdict of guilty is returned and the question is answered in the affirmative, AMCI 2d 9107.1 and 9307.1VF should be used in Stage Two for first offense cases, and AMCI 2d 9201.4 and 9315-VF should be used in Stage Two for habitual offender cases.

COMMENT

Ark. Code Ann. § 5-65-111(a), (b), (c), (d), and e.

CHAPTER 66

GAMBLING

SYNOPSIS

6601. Keeping Gambling House

AMCI 2d 6601
KEEPING GAMBLING HOUSE

_____*(Defendant(s))* [is] [are] **charged with the offense of keeping a gambling house. To sustain this charge the State must prove beyond a reasonable doubt that:**

[_____*(Defendant(s))* (kept) (or) (conducted) (or) (operated) (or) (was) (were) (interested, directly or indirectly, in [keeping] [or] [conducting] [or] [operating]) any (gambling house or place where gambling was carried on) (or)]

[_____*(Defendant(s))* (set up) (or) (kept) (or) (exhibited) (or) (caused to be [set up] [or] [kept] [or] [exhibited]) (or) (assisted in [setting up] [or] [keeping] [or] [exhibiting]) any gambling device (or)]

[_____*(Defendant(s))* (was) (were) interested, directly or indirectly, (in running any gambling house) (or) (in setting up and exhibiting any gambling device[s]) by furnishing money or other articles for the purpose of carrying on any gambling house.]

Definition

"Purpose." — A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-66-103.

Keeping a gambling house is a Class D felony.

CHAPTER 71

RIOT, DISORDERLY CONDUCT, ETC.

SYNOPSIS

7101. Definitions for Chapter 71

7102. Riot

7103. Aggravated Riot

7104. Inciting Riot

7104-EXP. Inciting Riot—Stage One Verdict Explanation—Multiple Possible Verdicts

7104-VF. Inciting Riot—Stage One Verdict Form—Multiple Possible Verdicts

7105. Arming Rioters

7106. Harassing Communications

7107. Communicating A False Alarm

7107-EXP. Communicating A False Alarm—Stage One Verdict Explanation—Multiple Possible Verdicts

7107-VF. Communicating A False Alarm—Stage One Verdict Form—Multiple Possible Verdicts

7108. Threatening A Fire Or Bombing

7108-EXP. Threatening A Fire or Bombing—Stage One Verdict Explanation—Multiple Possible Verdicts

7108-VF. Threatening A Fire or Bombing—Stage One Verdict Form—Multiple Possible Verdicts

7109. Defacing Objects Of Public Respect

7109-EXP. Defacing Objects Of Public Respect—Stage One Verdict Explanation—Multiple Possible Verdicts

7109-VF. Defacing Objects Of Public Respect—Stage One Verdict Form—Multiple Possible Verdicts

7110. Reserved

7111-A. Cruelty To Animals

7111-B. Aggravated Cruelty To Dog, Cat, Or Horse

7112. Unlawful Animal Fighting

7112-EXP. Unlawful Animal Fighting—Stage One Verdict Explanation—Multiple Possible Verdicts

7112-VF. Unlawful Animal Fighting—Stage One Verdict Forms—Multiple Possible Verdicts

7113. Abuse Of A Corpse

7114. Promoting Civil Disorder In The First Degree

7115. Communicating A Death Threat Concerning A School Employee Or Student

7116. Impairing The Operation Of A Vital Public Facility

(Text continued on page 71-3)

AMCI 2d 7101

DEFINITIONS FOR CHAPTER 71

As used in this Chapter, these terms have the following meanings:

(1) "Governmental function" means any activity which a public servant is legally authorized to undertake on behalf of any governmental unit he serves.

(2) "Occupiable structure" means a vehicle, building or other structure:

(a) where any person lives or carries on a business or other calling; or

(b) where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

(c) which is customarily used for overnight accommodation of persons;

whether or not a person is actually present. Each unit of an occupiable structure divided into separately occupied units is itself an occupiable structure.

(3) "Property" means real property or tangible or intangible personal property, including money or any paper or document that represents or embodies anything of value.

(4) "Vehicle" means any craft or device designed for the transportation of people or property across land or water, or through the air.

(5) "Vital public facility" means a facility maintained for use for public communications; transportation; supply of water, gas or power; law enforcement; fire protection; civil or national defense; or other public service.

(6) "Deadly weapon" means:

(a) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

(b) anything that in the manner of its use or intended use is capable of causing death or serious physical injury.

(7) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

(8) "Physical injury" means the impairment of physical condition or the infliction of substantial pain or the infliction of bruising, swelling, or visible marks associated with physical trauma.

COMMENT

Ark. Code Ann. §§ 5-1-102 and 5-71-101.

AMCI 2d 7102

RIOT

_____ *(Defendant(s))* [is] [are] **charged with the offense of riot. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That as [a] **member(s) of a group of three(3) or more persons** _____ *(defendant(s))* **knowingly engaged in tumultuous or violent conduct; and**

Second: That this conduct created a substantial risk of [causing public alarm] [or] [disrupting the performance of a governmental function] [or] [damaging or injuring property or persons].

Definition

"Knowingly."— A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions from AMCI 2d 7101 should be used when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-71-201. It takes at least 3 persons to commit riot. "Knowingly" is defined in § 5-2-202.

Riot is a Class A misdemeanor.

AMCI 2d 7103

AGGRAVATED RIOT

_____ *(Defendant(s))* [is] [are] **charged with the offense of aggravated riot. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That as [a] **member(s) of a group of three(3) or more persons** _____ *(defendant(s))* **knowingly engaged in tumultuous or violent conduct;**

Second: That this conduct created a substantial risk of [causing public alarm] [or] [disrupting the performance of a governmental function] [or] [damaging or injuring persons or property]; **and**

Third: That _____ *(defendant(s))* [knowingly possessed a deadly weapon] [or] [knew that another person with whom (he was) (they were) acting possessed a deadly weapon].

Definition

"Knowingly."— A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions from AMCI 2d 7101 should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-71-203. The Commentary to § 5-71-204 makes it clear that either possession of a deadly weapon or knowledge that a co-actor possesses a deadly weapon is sufficient to complete the offense. "Knowingly" is defined in § 5-2-202.

Aggravated riot is a Class D felony.

AMCI 2d 7104

INCITING RIOT

_____ *(Defendant(s))* [is] [are] **charged with the offense of inciting riot. To sustain this charge the State must prove** [the following things] **beyond a reasonable doubt:**

[First: That by speech or conduct _____ *(defendant(s))* knowingly urged others to participate in a riot; and

Second: That there were circumstances which produced a clear and present danger that the persons urged to do so would riot.]

[That _____ *(defendant(s))* knowingly gave commands (or) (instructions) (or) (signals) to others in furtherance of a riot.]

A riot occurs if three or more persons knowingly engage in tumultuous or violent conduct which creates a substantial risk of [causing public alarm] [or] [disrupting the performance of a governmental function] [or] [damaging or injuring property or persons].

Definition

"Knowingly."— A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions from AMCI 2d 7101 should be used when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7104-VF, AMCI 2d 7104 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7104-VF, AMCI 2d 7104 should be used in conjunction with 7104-EXP and 7104-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-71-203. "Knowingly" is defined in § 5-2-202. The definition of "riot" is taken from § 5-71-201.

AMCI 2d 7104-EXP

INCITING RIOT — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of inciting riot, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7104 and 7104-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 7104-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 7104-VF

INCITING RIOT — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* **is guilty of inciting riot.**

_____

FOREMAN

We, the Jury, find _____ *(defendant)* **not guilty.**

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that, as a result of _____*(defendant)*'s conduct, [persons were injured] [or] [property was damaged]?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 7104-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 7105

ARMING RIOTERS

_____ *(Defendant(s))* [is] [are] **charged with the offense of arming rioters. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* furnished (a deadly weapon) (or) (an explosive device) to _____ *(another person)* (another person); and

Second: That _____ *(defendant(s))* knew the (weapon) (or) (explosive device) was to be used in a riot.

First: That _____ *(defendant(s))* instructed _____ *(another person)* (another person) in the (preparation) (or) (use) of (a deadly weapon) (an explosive device); and

Second: That _____ *(defendant(s))* knew that the (weapon) (or) (explosive device) was to be used in a riot.

A riot occurs if three or more persons knowingly engage in tumultuous or violent conduct which creates a substantial risk of [causing public alarm] [or] [disrupting the performance of a governmental function] [or] [damaging or injuring property or persons].

NOTE ON USE

Definitions from AMCI 2d 7101 should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-71-204. The definition of "riot" is taken from § 5-71-201.

Arming rioters is a Class B felony.

AMCI 2d 7106
HARASSING COMMUNICATIONS

_____ *(Defendant(s))* [is] [are] **charged with the offense of making harassing communications. To sustain this charge the State must prove** [the following things] **beyond a reasonable doubt:**

[First: That _____ *(defendant(s))* (made a telephone call) (caused a telephone to ring repeatedly) with the purpose to harass, annoy, or alarm another person; and

Second: That _____ *(defendant(s))* did so with no purpose of legitimate communication (whether or not there was a conversation).]

[First: That _____ *(defendant(s))* (telephoned) (telegraphed) (communicated by mail with) (made written communication with) (emailed) (communicated by an electronic device with) _____ *(a person)* in a manner likely to harass, annoy, or cause alarm; and

Second: That _____ *(defendant(s))* made this communication with the purpose to harass, annoy, or alarm _____ *(person).*]

[That _____ *(defendant(s))*, with the purpose to harass, annoy, or alarm (_____) *(another person)* knowingly permitted (a telephone) (an electronic device) under (his) (their) control to be used (to communicate with (_____) *(another person)* in a manner likely to harass, annoy, or cause alarm) (to make a call with no purpose of legitimate communication, whether or not there was a conversation) (to cause a telephone to ring repeatedly with no purpose of legitimate communication).]

First: That _____ *(defendant(s))* threatened (by telephone) (in writing) (by electronic communication) to take an action against _____ *(another person)* that _____ *(defendant)* knew to be unlawful; and

Second: That _____ *(defendant(s))* made this communication with the purpose to harass, annoy, or alarm _____ *(another person).*

First: That _____ *(defendant(s))* placed two or more telephone calls anonymously at an hour or hours known by _____ *(defendant(s))* to be inconvenient to _____ *(another person)*, in an offensively repetitious manner or without a legitimate purpose of communication; and

Second: That _____ *(defendant(s))* made this communication with the purpose to harass, annoy, or alarm _____ *(another person)*; and

Third: That by this action, _____ *(defendant(s))* knowingly annoyed or alarmed _____ *(another person).*

First: That _____ *(defendant(s))* communicated by telephone to _____ *(another person)* that a person had been injured, killed, or was ill when the communication was known by _____ *(defendant(s))* to be false; and

Second: That _____ *(defendant(s))* made this communication with the purpose to frighten, intimidate, or emotionally distress _____ *(another person).*

First: That _____ *(defendant(s))*, without a legitimate purpose, communicated with _____ *(another person)* in a manner that _____ *(defendant(s))* knew or reasonably should have known would frighten, intimidate, or cause emotional distress to a similarly-situated person of reasonable sensibilities; and

Second: That _____ *(defendant(s))* did so with the purpose to frighten, intimidate, or emotionally distress _____ *(another person).*

Definitions

"Electronic device" includes a computer, cell phone, tablet, smartphone, or any other device that connects to the Internet or is used in the electronic transmission of communication or information.

"Purpose."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Communication," includes without limitation, telephone, telegraph, mail, email, in writing, message delivered to an electronic device, or any other form of written or electronic communication or electronic device, including without limitation by text message, social media post, facsimile transmission, and internet service.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-71-209. "Purpose" is defined in § 5-2-202. "Electronic device" is defined in § 5-71-209.

Harassing communications is a Class A misdemeanor.

(Text continued on page 71-19)

AMCI 2d 7107

COMMUNICATING A FALSE ALARM

_____ *(Defendant(s))* [is] [are] charged with the offense of communicating a false alarm. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *((defendant(s))* purposely [initiated] [or] [circulated] a report of a [present] [or] [past] [or] [impending] [(bombing) (fire) (offense) (catastrophe) (or) (_____*(other emergency)*]; and

Second: That [he] [they] did so knowing the report was false or baseless and knowing that it was likely to

[cause action by (_____*(agency)*, which was (an official) (or) (a volunteer) agency organized to deal with emergencies.]

[place (_____*(any person)*, in fear of (physical injury to himself or another person) (or) (damage to his property or that of another person).]

[cause total or partial evacuation of _____ *(occupiable structure, vehicle, or vital public facility)*.]

Definition

"Purposely." — A person acts purposely with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions from AMCI 2d 7101 should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7107-VF, AMCI 2d 7107 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in Stage Two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7107-VF, AMCI 2d 7107 should be used in conjunction with 7107-EXP and 7107-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-71-210. "Purposely" is defined in § 5-2-202.

AMCI 2d 7107-EXP

COMMUNICATING A FALSE ALARM — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant)* guilty of communicating a false alarm, you will so indicate on the verdict form provided to you. You will also make (a) finding(s) about the circumstances of the offense as directed on the form. (You are instructed that "physical injury" means the impairment of physical condition, the infliction of substantial pain, or the infliction of bruising, swelling, or visible marks associated with physical trauma.)

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7107 and 7107-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 7107-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 7107-VF
COMMUNICATING A FALSE ALARM — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that_____(defendant) is guilty of communicating a false alarm.

_____

FOREMAN

We, the Jury, find _____*(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

[Do you, the Jury, find beyond a reasonable doubt that, as a result of _____*(defendant's)* conduct, someone suffered a physical injury?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that damage to property resulted from _____ *(defendant's)* conduct?

YES _____

NO _____

_____

FOREMAN]

[Do you, the Jury, find beyond a reasonable doubt that _____ *(defendant)* communicated a false alarm of a present or impending bombing to or about a (public) (or) (private) educational institution?

YES _____

NO _____

_____

FOREMAN]

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 7107-EXP. A question should be submitted to the jury only if the evidence affords a rational basis for answering the question in the affirmative.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

COMMENT

Ark. Code Ann. § 5-71-210. Communicating a false alarm is a Class C felony if physical injury to a person results, and a Class D felony if damage to property results or the false alarm communicates a present or impending bombing and is made to or about a public or private educational institution. Otherwise, it is a Class A misdemeanor. A second or subsequent offense that would otherwise be a Class A misdemeanor is a Class D felony.

(Text continued on page 71-25)

AMCI 2d 7108

THREATENING A FIRE OR BOMBING

_____ *(Defendant(s))* [is] [are] **charged with the offense of threatening a** [fire] [or] [bombing]. **To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ *(defendant(s))* **purposely threatened** [damage] [or] [injury] **to the person or property of** [_____] *(another person)* [another person] **by** [fire] [or] [bombing] [or] [_____]*(other means)*; **and**

Second: That [he] [they] **did so in a manner likely** [to place (_____) *(another person)* (another person) in reasonable apprehension of (physical injury to himself or another) (or) (of damage to his property or the property of another).]

[to create public alarm.]

Definition

"Purposely."— A person acts purposely with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions from AMCI 2d 7101 should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7108-VF, AMCI 2d 7108 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in stage two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7108-VF, AMCI 2d 7108 should be used in conjunction with 7108-EXP and 7108-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-71-211. "Purposely" is defined in § 5-2-202.

AMCI 2d 7108-EXP

THREATENING A FIRE OR BOMBING — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find _____ *(defendant(s))* guilty of threatening a fire or bombing, you will so indicate on the verdict form provided you. You will also make a finding about whether another person suffered a physical injury as a result of _____ *(defendant(s))*'s conduct. You are instructed that "physical injury" means the impairment of physical condition or the infliction of substantial pain or the infliction of bruising, swelling, or visible marks associated with physical trauma.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7108 and 7108-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 7108-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 7108-VF

THREATENING A FIRE OR BOMBING — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____*(defendant)* is guilty of threatening a fire or bombing.

_____

FOREMAN

We, the Jury, find _____*(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that, as a result of _____*(defendant)*'s conduct, someone suffered a physical injury?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 7108-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 7109
DEFACING OBJECTS OF PUBLIC RESPECT

_____ *(Defendant(s))* [is] [are] **charged with the offense of defacing** [an] **object(s) of public respect. To sustain this charge the State must prove** [*the following things*] **beyond a reasonable doubt:**

[That _____ *(defendant(s))* purposely (defaced) (or) (marred) (or) (damaged) _____ *(monument)*, which was a public monument.]

[First: That _____ *(defendant(s))* purposely (defaced) (or) (marred) (or) (damaged) a work of art; and

Second: That the work of art was on display in a (publicly) (privately) owned place to which the public or substantial numbers of people have access.]

[That _____ *(defendant(s))* purposely (defaced) (or) (marred) (or) (desecrated) (or) (damaged) _____ *(structure or place)*, which was a (place of worship) (cemetery) (burial monument).]

Definition

"Purposely." — A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

Where the evidence does not afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7109-VF, AMCI 2d 7109 should be used in conjunction with AMCI 2d 8101 and 8301-VF. If a verdict of guilt is returned, then in stage two a punishment instruction from Chapter 91 and a verdict form from Chapter 93, both geared to the grade of the offense charged in the information or indictment, should be given.

Where the evidence does afford the jury the option of selecting a verdict from the alternatives set out in AMCI 2d 7109-VF, AMCI 2d 7109 should be used in conjunction with 7109-EXP and 7109-VF in Stage One and, if a verdict of guilt is returned, with the appropriate Stage Two punishment instruction and verdict form.

COMMENT

Ark. Code Ann. § 5-71-215.

Defacing objects of public respect may be a Class B felony, a Class C felony, a Class D felony, or a Class A misdemeanor.

AMCI 2d 7109-EXP
DEFACING OBJECTS OF PUBLIC RESPECT — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find_____(defendant(s)) guilty of defacing objects of public respect, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7109 and 7109-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 7109-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 7109-VF
DEFACING OBJECTS OF PUBLIC RESPECT—STAGE ONE VERDICT FORM—MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of defacing objects of public respect.

_____
FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____
FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

We, the Jury, find beyond a reasonable doubt that the cost of [repairing] [or] [replacing] (the damaged object) (_____) *(the damaged object)*

(1) exceeds $2500.

_____
FOREMAN

(2) exceeds $500 but is not more than $2500.

_____
FOREMAN

(3) does not exceed $500.

_____
FOREMAN

NOTE ON USE

This verdict form should be used only in conjunction with AMCI 2d 7109-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

[Next Page is 71-39]

AMCI 2d 7111-A
CRUELTY TO ANIMALS

_____ (Defendant(s)) [is] [are] **charged with the offense of cruelty to animals. To sustain this charge the State must prove beyond a reasonable doubt that** _____ (defendant(s)) **knowingly:**

[subjected an animal to cruel mistreatment]

[killed or injured an animal owned by another person without legal privilege or consent of the owner]

[abandoned an animal at a location without providing for the animal's continued care]

[failed to supply an animal in his or her custody with a sufficient quantity of wholesome food and water]

[failed to provide an animal in his or her custody with adequate shelter that is consistent with the breed, species, and type of animal]

[or]

[carried or caused to be carried in or upon any motorized vehicle or boat an animal in a cruel or inhumane manner].

Definitions

"Criminal episode" means an act that constitutes the offense of cruelty to animals that is committed by a person against one or more animals within a period of twenty-four hours.

"Knowingly" — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

Each alleged act of the offense of cruelty to animals committed against more than one animal may constitute a separate offense.

For the sole purpose of calculating the number of previous offenses, all offenses that are committed against one or more animals and as part of the same criminal episode are a single offense.

COMMENT

Ark. Code Ann. § 5-62-103. The offense of cruelty to animals may be an unclassified misdemeanor or a Class D felony depending on the number of prior convictions. A range of punishment is set out in the statute, including fines, imprisonment, or community punishment. Additionally, the court may order a psychiatric evaluation and treatment. The statute should be consulted.

AMCI 2d 7111-B
AGGRAVATED CRUELTY TO DOG, CAT, OR EQUINE

_____ *(Defendant(s))* [is] [are] **charged with the offense of aggravated cruelty to a** [dog], [cat], [or] [equine]. **To sustain this charge the State must prove the following beyond a reasonable doubt**:

That _____ *(defendant(s))* knowingly tortured [a] [dog(s)] [cat(s)] [or] [equine(s)].

Definitions

"Knowingly"—A person acts knowingly (or with knowledge) with respect to his conduct or the circumstances that exist at the time of his act when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Torture"—(A) The knowing commission of physical injury to a dog, cat, or equine by the infliction of inhumane treatment or gross physical abuse, causing the dog, cat, or equine intensive or prolonged pain, serious physical injury, or thereby causing death; and

(B) Mutilating, maiming, burning, poisoning, drowning, or starving a dog, cat, or equine.

Ark. Code Ann. § 5-62-102 contains many definitions, and it should be consulted for possible defined terms related to the facts of the case.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury. Ark. Code Ann. § 5-62-105, 107, 109, and 126 should be consulted for possible defenses, exemptions, or immunities.

Use AMCI 2d 9208 and 9320 when the State seeks to enhance punishment for a subsequent offense occurring within five years from a previous offense.

Use 8203-EXP, 8303-VF, 9204, and 9316-VF when it is alleged that the offense occurred in the presence of a child.

COMMENT

Ark. Code Ann. § 5-62-104. "Knowingly" is defined in § 5-1-101(8). "Torture" is defined § 5-62-102(21).

Aggravated cruelty to dogs, cats, or equine is a Class D felony; however, it is a Class C felony for a subsequent offense occurring within five years from a previous offense of aggravated cruelty to a dog, cat, or equine or of an equivalent penal offense of another state or foreign jurisdiction. Ark. Code Ann. § 5-4-702 provides for an enhanced sentence not to exceed five years if the offense is committed in the presence of a child.

Each alleged act of the offense of aggravated cruelty to a dog, cat, or equine

committed against more than one dog, cat or equine may constitute a separate offense. For the sole purpose of calculating the number of previous offenses, all offenses of aggravated cruelty to a dog, cat or equine that are committed against one or more dogs, cats, or equines, as part of the same criminal episode are a single offense. "Criminal episode" means an act that constitutes the offense of aggravated cruelty to a dog, cat, or equine, committed by a person against one or more dogs, cats, or equines within a period of twenty-four hours.

(Text continued on page 71-43)

AMCI 2d 7112
UNLAWFUL ANIMAL FIGHTING

_____ *(Defendant(s))* [is] [are] **charged with the offense of unlawful animal fighting. To sustain this charge the state must prove beyond a reasonable doubt that _____(defendant(s)) knowingly:**

[(Promoted) (or) (engaged in) (or) (is employed at) animal fighting.]

[Received money for the admission of another person to a place kept for animal fighting.]

[(Sold) (or) (purchased) (or) (possessed) (or) (trained) an animal for animal fighting.]

[(Purchased a ticket for admission to) (or) (was present at) an animal fight.]

[Witnessed an animal fight presented as a public spectacle.]

Definition

"Animal fighting" means fighting between rosters or other birds or between dogs, bears, or other animals.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7112-EXP and 7112-VF if the evidence affords the jury the option of selecting a verdict from the alternatives provided therein.

COMMENT

Ark. Code Ann. § 5-62-120.

Unlawful animal fighting may be a Class D felony or a Class A misdemeanor.

AMCI 2d 7112-EXP
UNLAWFUL ANIMAL FIGHTING — STAGE ONE VERDICT EXPLANATION — MULTIPLE POSSIBLE VERDICTS

If you find_____(defendant(s)) guilty of unlawful animal fighting, you will so indicate on the verdict form provided you. You will also make a finding about the circumstances of the offense, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7112 and 7112-VF where the evidence affords the jury a rational basis for selecting a verdict from the alternatives set out in AMCI 2d 7112-VF. In other cases, use AMCI 2d 8101 and 8301-VF.

AMCI 2d 7112-VF
UNLAWFUL ANIMAL FIGHTING — STAGE ONE VERDICT FORM — MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt that_____(defendant) is guilty of unlawful animal fighting.

_____

FOREMAN

We, the Jury, find_____(defendant) not guilty.

_____

FOREMAN

If your verdict is guilty, you shall make ONE of the following findings:

(1) We, the Jury, find beyond a reasonable doubt that_____ (defendant)_____(set out allegation under § 5-62-120(a)(1)(A)-(C)).

_____

FOREMAN

(2) We, the Jury, find beyond a reasonable doubt that_____ (defendant)_____(set out allegation under § 5-62-120(b)(1)(A) or (B)).

_____

FOREMAN

NOTE ON USE

Ark. Code Ann. § 5-62-120(a)(1)(A)-(C) offenses are Class D felonies; § 5-62-120(b)(1)(A) and (B) are misdemeanors.

This verdict form should be used only in conjunction with AMCI 2d 7112-EXP.

If a verdict of guilt is returned, the appropriate standard punishment instruction and verdict form should be used in Stage Two.

AMCI 2d 7113
ABUSE OF A CORPSE

_____ *(Defendant(s))* [is] [are] **charged with the offense of abuse of a corpse. To sustain this charge the State must prove beyond a reasonable doubt that** [without lawful authority]

[_____ *(Defendant(s))* knowingly (disinterred) (removed) (dissected) (or) (mutilated) a corpse.]

[_____ (physically mistreated) (or) (concealed) a corpse in a manner offensive to a person of reasonable sensibilities.]

Definition

"Knowingly."—A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

"In a manner offensive to a person of reasonable sensibilities" means in a manner that is outside the normal practices of handling or disposing of a corpse, and includes without limitation the dismembering, submerging, or burning of a corpse.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-60-101. "Knowingly" is defined in § 5-2-202. Abuse of a corpse is a Class C felony.

This instruction was amended to include the word "physically" after the Court of Appeals did not decide whether trial court erred in refusing to give the more accurate jury instruction, which added the word "physically" before "mistreated," because there was insufficient evidence to support the conviction. *Hammonds v. State*, 2010 Ark. App. 465, ___ S.W.3d ___.

AMCI 2d 7114
PROMOTING CIVIL DISORDER IN THE FIRST DEGREE

_____ *(Defendant(s))* [is] [are] **charged with the offense of promoting civil disorder in the first degree. To sustain this charge the State must prove the following things beyond a reasonable doubt:**

First: That _____ **(defendant(s))** [taught] [or] [demonstrated] **to** _____ *(any other person)* [any other person] **the** [use] [or] [application] [or] [construction] **of any** [firearm] [or] [explosive or incendiary device] **capable of causing injury or death to any persons; and**

Second: That _____ **(defendant(s))** [knew] [or] [intended] **that the** [firearm] [or] [explosive or incendiary device] [would be] [be] **used in furtherance of any public disturbance involving acts of violence by assemblages of three (3) or more persons; and**

Third: That the public disturbances [caused an immediate danger of] [or] [resulted in] [damage to the property of] [injury to the person of] **any other individual.**

Definitions

"Explosive or incendiary device"—includes:

(A) Dynamite and all other forms of high explosives;

(B) Any explosive bomb, grenade, missile, or similar device;

(C) Explosive materials meaning explosives, blasting agents and detonators; and

(D) Any incendiary bomb or grenade, fire bomb, or similar device; and including any device which consists of or includes a breakable container containing a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and can be carried or thrown by one (1) individual acting alone.

"Firearm."—means any device designed, made, or adapted to expel a projectile by the action of an explosive.

NOTE ON USE

Appropriate portions of the definition of "explosive or incendiary device" should be given in every case.

COMMENT

Ark. Code Ann. § 5-71-301 to -303.

Promoting civil disorder in the first degree is a Class C felony. No second degree offense exists.

AMCI 2d 7115
COMMUNICATING A DEATH THREAT CONCERNING A SCHOOL EMPLOYEE OR STUDENT

_____ *(Defendant)* is charged with the offense of communicating a death threat concerning a school employee or student. To sustain this charge the State must prove the following things beyond a reasonable doubt:

FIRST: That _____ (Defendant) communicated to any other person a threat to cause the death of (a school employee) (or) (a student); **and**

SECOND: That the threat involved the use of a (firearm) (or) (deadly weapon); **and**

THIRD: That a reasonable person would believe that _____ (Defendant) intended to carry out the threat; and

FOURTH: That _____ (Defendant) purposely engaged in conduct that constituted a substantial step in a course of conduct intended to culminate in the commission of the threatened act: and

FIFTH: That _____ (defendant's) conduct was strongly corroborative of _____ (defendant's) criminal purpose; and

SIXTH: That there was a close temporal relationship between the threatened act and the substantial step.

Definitions

"Purposely."—A person acts purposely with respect to his conduct when it is his conscious object to engage in that conduct.

"School."—means any elementary school, junior high school, high school, technical institute, post-secondary vocational-technical school, 2-year college, or 4-year college or university.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code. Ann. § 5-17-101. "Purposely" is defined in Ark. Code Ann. § 5-2-202. "School" is defined in § 5-17-101(b). Communicating a death threat concerning a school employee or student is a Class D felony.

AMCI 2d 7116
IMPAIRING THE OPERATION OF A VITAL PUBLIC FACILITY

_____ *(Defendant)* is charged with the offense of impairing the operation of a vital public facility. To sustain this charge, the State must prove the following things beyond a reasonable doubt:

FIRST: that _____ (defendant) **knowingly caused a substantial interruption or impairment of an operation of a vital public facility by:**

[damaging the property of another person]

[*incapacitating an operator of a vital public facility*]

[engaging in (a fight or violent and tumultuous behavior) (or) (conduct that caused a substantial disruption, obstruction, or impediment to the operation of a vital public facility)]; **AND**

SECOND: that _____ *(defendant)* had no reasonable ground to believe he or she had a right to do so.

Definitions

"Vital public facility."—A county jail, city jail, public detention facility, or temporary holding facility for detained persons.

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

It will be necessary to prepare additional instructions if there is a jury issue on whether the offense is a Class A misdemeanor or a Class C felony based on the nature of the conduct. *See* Comment.

COMMENT

Ark. Code Ann. § 5-38-205. The definition of "vital public facility" is contained in the statute.

Impairing the operation of a vital public facility is a Class C felony except that when it is committed by engaging in a fight or violent and tumultuous behavior or other conduct that causes a substantial disruption, obstruction, or impediment to the operation of a vital public facility, it is a Class A misdemeanor.

CHAPTER 73

FIREARMS AND OTHER WEAPONS

SYNOPSIS

7300. Definitions for Chapter 73

7301. Possessing Instrument Of Crime

7302. Firearms — Possession By Felon

7303. Criminal Use Of Prohibited Weapon

7303-D. Criminal Use Of Prohibited Weapon — Defense

7304. Defacing A Firearm

7305. Possession Of A Defaced Firearm

7305-D. Possession Of A Defaced Firearm — Defense

7306. Criminal Possession Of Explosive Material or Destructive Device

7306.1 Criminal Distribution Of Explosive Material

7306.2 Possession Of Stolen Explosive Material

7306.3 Unlawful Receipt Or Possession Of Explosive Material

7306.4 Unlawful Receipt Or Possession Of Explosive Material

7307. Furnishing A Deadly Weapon To A Minor

7308. Carrying A Weapon

7308-D. Carrying a Weapon — Defense

7309. Possession Of A Firearm At Public Or Private School, On School Bus, Or At School Bus Stop

7309-D. Possession Of Handgun At Public Or Private School, On School Bus, Or At School Bus Stop — Defense

7310. Possession Of Handgun On Property Of Public Or Private Institution Of Higher Education

7310-D. Possession Of Handgun On Property Of Public Or Private Institution Of Higher Education — Defense

7311. Furnishing A Handgun To A Felon

7312. Furnishing A Prohibited Weapon To A Felon

7313. Possession Of Handgun In A Courtroom

7313-D. Possession Of A Handgun In A Courtroom — Defense

AMCI 2d 7300
DEFINITIONS FOR CHAPTER 73

As used in this chapter, unless the context otherwise requires, these terms have the following meanings:

(1) **"Blasting agent" means** any material or mixture consisting of fuel and oxidizer, intended for blasting provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

(2) **"Contraband" means** any explosive material, which was used with the knowledge and consent of the owner to facilitate a violation of Ark. Code Ann. § 5-73-101-131, as well as any explosive material possessed under circumstances prohibited by law.

(3) **"Destruction Device" means**:

(A)(i) Any explosive, incendiary or poison gas;

(ii) Bomb;

(iii) Grenade;

(iv) Rocket having a propellant charge of more than four ounces;

(v) Missile having an explosive or incendiary charge of more than one-quarter ounce;

(vi) Mine; or

(vii) Similar device; and

(B) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in (A) above and from which a destructive device may be readily assembled for use as a weapon.

(4) **"Detonator" means** any device containing any initiating or primary explosive that is used for initiating detonation. A "detonator" may not contain more than ten (10) grams of total explosives by weight, excluding ignition or delay charges, and may include, without limitation, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and non-instantaneous and delay blasting caps that use detonating cord, shock tube, or any other replacement for electric leg wires.

(5) **"Distribute" means** to sell, issue, give, transfer, or otherwise dispose of explosive material.

(6) **"Explosive Material" means** explosives, blasting agents, or detonators.

(7) **"Explosives" means** any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion. "Explosives" includes, without limitation, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, any material determined to be within the scope of Title

18 United States Code Chapter 40, and any material classified as an explosive other than consumer fireworks, 1.4 (Class C, Common), by the hazardous materials regulations of DOT 49 C.F.R.

(8) "Instrument of crime" means anything manifestly designed, made, adapted, or commonly used for criminal purposes.

(9) "Minor" means any person under eighteen (18) years of age.

(10) "Violent felony conviction" means a conviction for any felony offense against the person codified in Title 5, chapters 10-14, or any other offense containing as an element of the offense one (1) of the following:

(A) The use of physical force;

(B) The use or threatened use of serious physical force;

(C) The infliction of physical harm; or

(D) The creation of a substantial risk of serious physical harm.

(11) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use. "Firearm" includes:

(A) A device described above that is not loaded or lacks a clip or another component to render it immediately operable; and

(B) Components that can readily be assembled into a device described above.

NOTE ON USE

Insert definition(s) in instructions in this chapter when appropriate.

COMMENT

Ark. Code Ann. § 5-73-101. "Firearm" is defined in Ark. Code Ann. § 5-1-102 (6).

AMCI 2d 7301
POSSESSING INSTRUMENT OF CRIME

_____ *(Defendant)* [is] [are] **charged with the offense of possessing an instrument of crime. To sustain this charge the State must prove beyond a reasonable doubt that [he] [they] possessed any instrument of crime with a purpose to employ it criminally.**

Definitions

"Instrument of crime."—means anything manifestly designed, made, adapted, or commonly used for criminal purposes.

"Purpose."—A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-102. "Purpose" is defined in § 5-2-202. "Instrument of crime" is defined in § 5-73-101.

Possessing instrument of crime is a Class A misdemeanor.

AMCI 2d 7302
FIREARMS—POSSESSION BY FELON

_____ *(Defendant)* is charged with the offense of possession of a firearm. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That _____ *(Defendant)* has been convicted of [a felony] [the felony of _____] *(violent felony as defined in Ark. Code Ann. § 5-73-101(3)*; and

Second: That _____ *(defendant)* possessed or owned a firearm.

Definitions

"Convicted of a felony."—means that a court or jury previously made a determination that defendant was guilty of committing a felony (even though the court suspended imposition of sentence or placed defendant on probation), (but a person who has been granted a pardon explicitly restoring the ability to possess a firearm has not been convicted of a felony).

"Possess."—means to exercise actual dominion, control, or management over a tangible object.

NOTE ON USE

The definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

A violent felony is defined in Ark. Code Ann. § 5-73-101(3) as any felony offense against the person codified in Title 5, chapters 10-14, of any other offense containing as an element of the offense the use of physical force; the use of threatened use of serious physical force; the infliction of physical harm; or the creation of a substantial risk of serious physical harm. Whether a felony is a violent felony is a question of law. If the state alleges that the defendant has a prior violent felony conviction, the court should determine whether the alleged felony is a violent felony as defined in Ark. Code Ann. § 5-73-101(3). If the court determines that the alleged prior felony is a violent felony, the second alternative in the first element of the instruction should be used to submit the jury the question whether the defendant committed the alleged prior violent felony.

COMMENT

Ark. Code Ann. § 5-74-103. The definition of "convicted of a felony" is based on Ark. Code Ann. § 5-73-103(b). "Possess" is defined in Ark. Code Ann. § 5-1-102(15).

Possession by a felon of a firearm is a Class B felony if:

(1) The defendant has a prior violent felony conviction, as defined in Ark. Code Ann. § 5-73-101(3);

(2) The current possession of the firearm involves the commission of

another crime; or

(3) The defendant has previously been convicted under Ark. Code Ann. § 5-73-103 or a similar provision from another jurisdiction.

Otherwise, possession by a felon of a firearm is a Class D felony. If a dispute arises concerning the nature of the previous felony conviction, it may be necessary to submit a modified version of the instruction.

Ark. Code Ann. § 5-73-103(a)(2) and (3) includes criminal responsibility for persons adjudicated to be mentally ill or involuntarily committed to any mental institution. The Committee felt that a prosecution under these provisions is so unlikely that no instruction has been prepared.

AMCI 2d 7303
CRIMINAL USE OF PROHIBITED WEAPON

_____ *(Defendant(s))* [is] [are] charged with the offense of criminal use of [a] prohibited weapon(s). To sustain this charge the State must prove beyond a reasonable doubt that _____ *defendant(s))* knowingly [used] [or] [possessed] [or] [made] [repaired] [sold] [_____] *(otherwise dealt in)* any [bomb] [metal knuckles] [or] [(other) implement for the infliction of serious physical injury or death that serves no lawful purpose].

Definitions

"Firearm."—means any device designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Serious physical injury."—means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-104. "Firearm" and "serious physical injury" are defined in § 5-1-102.

Criminal use of a prohibited weapon may be a Class A misdemeanor, Class B felony, or Class D felony, depending upon the weapon used. No separate explanatory instruction and verdict forms have been prepared because the nature of the weapon allegedly used will rarely be an issue of fact. If it is, instructions patterned after AMCI 2d 7109-EXP and 7109-VF, for example, should be given.

Act 495 of 2019 provides that the statute does not apply to a person using or otherwise dealing with a firearm in compliance with the National Firearms Act.

AMCI 2d 7303-D
CRIMINAL USE OF PROHIBITED WEAPON—DEFENSE

It is a defense to the offense of using a prohibited weapon that _____ *(defendant)* [was a (law enforcement officer) (deputy) (prosecuting attorney) (prison guard) (member of United States Armed Forces) acting in the course and scope of his duty at the time he used or possessed the prohibited weapon] [or] [(used) (or) (possessed) (or) (made) (repaired) (sold) (_____) *(otherwise dealt in)* the prohibited weapon under circumstances negating any likelihood that the weapon could be used as a weapon]. The defendant is asserting this defense is required only to raise a reasonable doubt in your minds. Consequently, if you believe that this defense has been shown to exist, or if the evidence with regard to the defense leaves you with a reasonable doubt as to the defendant's guilt, then you must find him not guilty.

Definition

"Law enforcement officer."—means any public servant vested by law and with a duty to maintain public order or to make arrests for offenses.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-104. "Law enforcement officer" is defined in Ark. Code Ann. § 5-1-102.

The enumerated defenses are not designated by the Code as affirmative defenses. Therefore, under Ark. Code Ann. § 5-1-111(c), if there is evidence to support one of the defenses it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

(Text continued on page 73-11)

AMCI 2d 7304

DEFACING A FIREARM

_____ *(Defendant(s)* [is] [are] charged with the defense of defacing a firearm. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* knowingly [removed] [defaced] [or] [marred] [covered] [altered] [or] [destroyed] the manufacturer's serial number or identification mark of a firearm.

Definitions

"Firearm." — means any device designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Knowingly." — A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-106. "Knowingly" is defined in § 5-2-202. "Firearm" is defined in § 5-1-102.

Defacing a firearm is a Class D felony.

AMCI 2d 7305

POSSESSION OF A DEFACED FIREARM

_____ *(Defendant(s))* [is] [are] charged with the offense of possession of a defaced firearm. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* knowingly possessed a firearm with [a manufacturer's serial number] [or] [_____] *(other identification mark required by law)* [removed] [defaced] [or] [marred] [covered] [altered] [or] [destroyed].

Definition

"Knowingly." — A person acts knowingly with respect to his conduct when he is aware the conduct is of that nature.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-107. "Knowingly" is defined in § 5-2-202.

Possession of a defaced firearm is a Class A misdemeanor.

Ark. Code Ann. § 5-73-107 was amended by 1995 Ark. Acts 1202 to make the offense a Class A misdemeanor if the identification, make or serial number is merely covered or obstructed. This instruction should be appropriately modified if the type and degree of defacement become issues at trial.

AMCI 2d 7305-D
POSSESSION OF A DEFACED FIREARM—DEFENSE

It is a defense to the offense of possessing a defaced firearm if

[_____ *(defendant(s))* reported the possession to the police or other governmental agency before (his arrest) (the issuance of an arrest warrant or summons)]

[the firearm was manufactured prior to January 1, 1968].

The defendant in asserting this defense is only required to raise a reasonable doubt in your minds. Consequently, if you believe that this defense has been shown to exist, or if the evidence with regard to the defense leaves you with a reasonable doubt as to the defendant's guilt then you must find him not guilty.

COMMENT

Ark. Code Ann. § 5-73-107.

This defense is not designated by the Code as an affirmative defense. Therefore, under § 5-1-111(c), if there is evidence to support the defense, it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

(Text continued on page 73-17)

AMCI 2d 7306

CRIMINAL POSSESSION OF EXPLOSIVE MATERIAL OR DESTRUCTIVE DEVICE

_____ (Defendant(s) [is] [are] **charged with the offense of criminal possession of** [explosive material] [or] [destructive device]. **To sustain this charge the State must prove beyond a reasonable doubt that** _____ (defendant (s)) [sold] [or] [[possessed] [or] [manufactured] [or] [transferred] [or][transported] [an explosive material] [or] [a destructive device]

[for the purpose of using it to commit an offense.]

[and knew or should have known that some other person intended to use the (explosive material) (or) (destructive device) to commit an offense.]

Definitions

"Knowledge" — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Offense" — An offense is conduct for which a sentence to a term of imprisonment or fine or both is authorized by statute. Offenses are classified as follows: Felonies; Misdemeanors; or Violations.

"Purpose" — A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

See AMCI 2d 7300 for additional definitions.

NOTE ON USE

Definition(s) should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-108. "Purpose" and "knowledge" are defined in Ark Code Ann. § 5-2-202. "Offense" is defined in Ark Code Ann. § 5-1-105.

Criminal possession of explosive material or a destructive device is a Class B felony.

AMCI 2d 7306.1
CRIMINAL DISTRIBUTION OF EXPLOSIVE MATERIAL

_____ (Defendant(s) [is] [are] **charged with the offense of criminal distribution of explosive material. To sustain this charge the State must prove beyond a reasonable doubt that** _____ (defendant (s)) **knowingly distributed explosive material to**

[an individual who (has pled (guilty to) (or) (nolo contendere to)) (or) (has been found guilty of) a crime in state or federal court punishable by imprisonment for a term exceeding one year] [or]

[an individual who is a fugitive from justice] [or]

[an individual who is (an unlawful user of) (or) (addicted to) any controlled substance] [or]

[an individual who (has been adjudicated as having a mental disease or defect) (or) (has been committed to an institution or residential treatment facility because of a mental disease or defect)] [or]

[an individual under twenty-one years of age] [or]

[an individual who is an alien] [or]

[an individual who has been dishonorably discharged from a branch of the United States armed services] [or]

[an individual who has renounced his or her United States citizenship].

Definitions

"Alien." — A person who is not a citizen or national of the United States.

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

See AMCI 2d 7300 for additional definitions.

NOTE ON USE

Definition(s) should be given when requested by counsel or when the court feels that it will be helpful to the jury.

Ark. Code Ann. § 5-73-108 (b)(1)(F) lists "aliens" whose status does not constitute a violation of this statute. If the distributee of explosive material is an alien, this provision needs to be reviewed, and it may be necessary to prepare additional instructions if a jury issue is presented.

COMMENT

Ark. Code Ann. § 5-73-108. "Knowingly" is defined in § 5-2-202. "Alien" is defined in Ark. Code Ann. § 5-73-108 (h).

Criminal distribution of explosive material is a Class C felony.

AMCI 2d 7306.2
POSSESSION OF STOLEN EXPLOSIVE MATERIAL

_____ (Defendant(s) [is] [are] **charged with the offense of possession of stolen explosive material. To sustain this charge the State must prove beyond a reasonable doubt that** _____ (defendant(s)) [received] [possessed] [transported] [shipped] [concealed] [stored] [bartered] [sold] [disposed of] [or] [(pledged) (or) (accepted) as security for a loan] **any stolen explosive materials knowing or having reasonable cause to believe that the explosive material was stolen**.

Definitions

"Knowingly." — A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

See AMCI 2d 7300 for additional definitions.

NOTE ON USE

Definition(s) should be given when requested by counsel or when the court feels that it will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-108. "Knowingly" is defined in § 5-2-202.

Possession of stolen explosive material is a Class C felony.

AMCI 2d 7306.3
UNLAWFUL RECEIPT OR POSSESSION OF EXPLOSIVE MATERIAL

[*insert in 3602-VF-PROP*]

[Do you, the Jury, find beyond a reasonable doubt that the property was (explosives) (blasting agents) (or) (detonators), and it was taken with the purpose of causing harm to (a person) (or) (property)?

YES _____

NO _____

_____

FOREMAN

Definitions

See AMCI 2d 7300 for definitions of "explosives," "blasting agents," "detonators," and other terms.

NOTE ON USE

Definition(s) should be given when requested by counsel or when the court feels that it will be helpful to the jury.

Use with AMCI 2d 3602 and 3602-VF. The bracketed language set out in this instruction should be inserted in AMCI 2d 3602-VF-PROP.

COMMENT

Ark. Code Ann. § 5-73-108(e). Theft of explosive material with the purpose to cause harm is a Class B felony.

AMCI 2d 7306.4
UNLAWFUL RECEIPT OR POSSESSION OF EXPLOSIVE MATERIAL

_____ (Defendant(s) [is] [are] **charged with the offense of unlawful receipt or possession of explosive material. To sustain this charge the State must prove beyond a reasonable doubt**

First, that (defendant(s)) _____ **knowingly** *(received) (or) (possessed)* **explosive material, and**

Second, that at the time of the receiving or possessing of the explosive material, _____ *(defendant(s))*

[has pleaded guilty or nolo contendere to or has been found guilty in any state or federal court of a crime punishable by imprisonment for a term exceeding one year]

[is a fugitive from justice]

[is an unlawful user of or addicted to any controlled substance]

[(has been adjudicated to have a mental disease or defect) (or) (has been committed to an institution or residential treatment facility because of a mental disease or defect)]

[is under twenty-one years of age]

[is an _____ alien]

[has been dishonorably discharged from a branch of the United States armed forces]

[has renounced his or her United States citizenship].

Definitions

"Alien."—A person who is not a citizen or national of the United States.

"Knowingly."—A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

See AMCI 2d 7300 for additional definitions.

NOTE ON USE

Definition(s) should be given when requested by counsel or when the court feels that it will be helpful to the jury.

Ark. Code Ann. § 5-73-108 (d)(1)(F) lists "aliens" whose status does not constitute a violation of this statute. If the defendant is an alien, this provision needs to be reviewed, and it may be necessary to prepare additional instructions if a jury issue is presented.

If the defense is raised that the defendant was acting within the scope of his or her employment with a business authorized to use explosive material, then an

instruction should be prepared, such as modifying AMCI 2d 7313-D.

COMMENT

Ark Code Ann. § 5-73-108. "Knowingly" is defined in § 5-2-202. "Alien" is defined in Ark. Code Ann. § 5-73-108 (h). Although the mental state, "knowingly," does not appear in the statute, it has been inserted in this instruction based on Ark. Code Ann. §§ 5-2-203 and 204 and case law, including *State v. Setzer*, 302 Ark. 593, 791 S.W. 2d 365 (1990) and *Owens v. State*, 92 Ark. App. 480, 215 S.W. 3d 681 (2005) (Knowing possession, however, is plainly all that is necessary to violate § 5-73-131; and if a criminal statute does not indicate a culpable mental state, culpability is established if the person acts purposely, knowingly, or recklessly. Ark. Code Ann. 5-2-203(b)). Additionally, the definition of "possess" in the Arkansas Criminal Code states: "(15) "Possess" means to exercise actual dominion, control, or management over a tangible object." Ark Code Ann. § 5-1-102(15). This definition requires conscious possession.

The offense of unlawful receipt or possession of an explosive material is a Class C felony.

It is a defense to prosecution if at the time of the receiving or possessing the explosive material the person was acting within the scope of his or her employment with a business authorized to use explosive material. The enumerated defense is not designated as an "affirmative defense." Therefore, under Ark. Code Ann. § 5-1-111 (c), if there is evidence to support the defense, it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

AMCI 2d 7307
FURNISHING A DEADLY WEAPON TO A MINOR

_____ *(Defendant(s))* [is] [are] charged with the offense of furnishing a deadly weapon to a minor. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* [sold] [bartered] [leased] [gave] [rented] [_____ *(otherwise furnished)*] a [firearm] [or] [_____ *(other deadly weapon)*] to _____, *(name of minor)* a minor without the consent of a [parent] [guardian] [_____ *(other person responsible for general supervision of minor's welfare)*].

Definitions

"Deadly weapon."—means [a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury] [anything that in the manner of its use or intended use is capable of causing death or serious physical injury] [a sawed-off or short-barrelled shotgun] [a sawed-off or short-barreled rifle] [an explosive or incendiary device] [metal knuckles] [a defaced firearm] [other implement for the infliction of serious physical injury or death that serves no lawful purpose].

"Defaced firearm."—means a firearm on which the manufacturer's serial number or other identification mark required by law has been removed, marred, altered, covered, or destroyed.

"Explosive of incendiary device."—includes:

[Dynamite and all other forms of high explosives.] [or]

[Any explosive bomb, grenade, missile, or similar device.] [or]

[Any incendiary bomb or grenade, fire bomb, or similar device; and including any device which consists or includes a breakable container containing a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and can be carried or thrown by one (1) individual acting alone.]

"Firearm."—means any device designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Minor."—is any person under 18 years of age.

"Serious physical injury."—means physical injury that [creates a substantial risk of death] [or[[causes (protracted disfigurement) (protracted impairment of health) (loss or protracted impairment of the function of any bodily member or organ)].

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Except in cases where the minor is found with more than one kind of weapon and there are questions about which weapons, if any, were furnished by the defendant, the type of weapon furnished will seldom be drawn in issue. Neither a special explanatory instruction nor a special verdict form id provided. If the numbers and types of weapons furnished are draw in issue, than a special instruction and verdict form should be submitted to the jury.

COMMENT

Ark. Code Ann. § 5-73-109. "Deadly weapon," "serious physical injury," "firearm," "sawed-off or short-barreled shotgun" and "sawed-off or short-barreled rifle" are defined in § 5-1-102; "minor" is defined in § 5-73-101; "explosive or incendiary device" is defined in § 5-71-301; "defaced firearm" is defined in § 5-73-107.

Furnishing a deadly weapon to a minor is a Class A misdemeanor, or a Class B felony, depending on what kind of weapon is furnished.

AMCI 2d 7308
CARRYING A WEAPON

_____ *(Defendant(s))* [is] [are] charged with the offense of carrying a weapon. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* possessed a [handgun] [knife] [club] [on or about his person in a vehicle occupied by] [him] [they] [or] [otherwise readily available for use] with a purpose to attempt to unlawfully employ it as a weapon against a person.

Definitions

"Club"—means any instrument that is specially designed, made, or adapted for the purpose of inflicting physical injury or death by striking: [it includes a (blackjack) (billy) (sap).]

"Firearm"—means any devise designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Journey"—means travel beyond the county in which a person lives.

"Handgun"—means any firearm, with a barrel length of less than 12 inches that is designed, made, or adapted to be fired with one hand.

"Knife"—means any bladed hand instrument three inches or longer that is capable of inflicting serious physical injury or death by cutting or stabbing; [it includes (a dirk) (a sword) (a spear in a cane) (a razor) (an icepick).]

"Purpose."—A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

"Serious physical injury"—means physical injury that [creates a substantial risk of death] [or] [causes(protracted disfigurement) (protracted impairment of health) (loss or protracted impairment of the function of any bodily member or organ)].

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

Refer to Chapter 5 if instructions on attempt are needed.

Arkansas Code Ann. § 5-73-120 (c) was amended in 2013 and 2015 to provide that carrying a weapon is "permissible" under stated circumstances. Formerly, the statute provided that the enunciated circumstances were defenses to the charge of carrying a weapon, and the defense is covered in AMCI 2d 7308-D. Whether these amendments possibly shift the burden of proof will be decided by the courts. Counsel may need to modify 7308 and 7308-D.

COMMENT

Ark. Code Ann. § 5-73-120. "Purpose" is defined in § 5-2-202. "Serious

physical injury" and "firearm" are defined in § 5-1-102. The other three definitions are contained in § 5-73-120 and for that section only.

1995 Ark. Acts 832 amended the previous statutory language. "A person commits the offense . . . if he possesses a handgun . . . on or about his person, in a vehicle occupies by him . . . ," by striking the comma. Act 832 also added a new defense set out at AMCI 2d 7308-D.

Carrying a weapon is a Class A misdemeanor.

AMCI 2d 7308-D
CARRYING A WEAPON—DEFENSE

It is a defense to the charge of carrying a weapon that at the time of the act of carrying it the defendant:

[was in his own (dwelling) (or) (place of business) (or) (on property in which he had a possessory or proprietary interest).]

[was a (law enforcement officer) (correctional officer) (member of the armed forces) acting in the course and scope of his official duties.]

[was assisting a (law enforcement officer) (correctional officer) (member of the armed forces) acting in the course and scope of official duties, pursuant to the direction or request of such (law enforcement officer) (correctional officer) (member of the armed forces).]

[was carrying the weapon when upon a journey (,unless the journey was through a commercial airport [when presenting at the security checkpoint in the airport] [or] [and the weapon was in his checked baggage and was not lawfully declared]).]

[was a registered commissioned security guard acting in the course and scope of his duties.]

[was hunting game which Arkansas Game and Fish Commission rules and regulations allow to be hunted with a handgun.]

[was on his way to or from a hunting area for the purpose of hunting game which Arkansas Game and Fish Commission rules and regulations allow to be hunted with a handgun.]

[was a certified law enforcement officer on or off-duty.]

[was in possession of a concealed handgun and had a valid license to carry a concealed handgun and was not in a place in which the possession was prohibited.]

[was in possession of a handgun and was a retired law enforcement officer with a valid concealed carry authorization issued under federal or state law.]

[(deputy) prosecuting attorney.]

The defendant, in asserting the defense, is required only to raise a reasonable doubt in your minds. Consequently, if you believe that the defense has been shown to exist, or if the evidence with regard to the defense leaves you with a reasonable doubt as to the defendant's guilt, then you must find him not guilty.

Definition

"Law enforcement officer"—means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

Arkansas Code Ann. § 5-73-120 (c) was amended in 2013 and 2015 to provide that carrying a weapon is "permissible" under stated circumstances. Formerly, the statute provided that the enunciated circumstances were defenses to the charge of carrying a weapon, and the defense is covered in AMCI 2d 7308-D. Whether these amendments possibly shift the burden of proof will be decided by the courts. Counsel may need to modify 7308 and 7308-D.

See Section 5-73-119 e (6)(B) if there is an issue regarding an off-duty officer's possession of valid identification.

COMMENT

Ark. Code Ann. § 5-73-120. "Law enforcement officer" is defined in Ark. Code Ann. § 5-1-102.

The enumerated defenses are not designated by the Code as affirmative defenses. Therefore, under Ark. Code Ann. § 5-1-111(c), if there is evidence to support one of the defenses it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

For Arkansas cases dealing with the "journey" defense, *see Riggins v. State*, 17 Ark. App. 68, 703 S.W. 2d 463 (1986); *Woodall v. State*, 260 Ark. 786, 543 S.W.2d 957 (1976); *Collins v. State*; 183 Ark. 425, 36 S.W. 2d 75 (1931); *Ellington v. Town of Denning*, 99 Ark. 236, 138 S.W. 453 (1911); *Ackerson v. State*, 76 Ark. 301, 89 S.W. 550 (1905); *Holland v. State,* 73 Ark 425, 84 S.W. 468 (1904); *Hathcote v. State*, 55 Ark. 181, 17 S.W. 721; *Davis v. State*, 45 Ark. 359 (1885).

For licensing requirements, *see* Ark. Code Ann. § 5-73-301 *et seq.*

AMCI 2d 7309
POSSESSION OF A FIREARM AT PUBLIC OR PRIVATE SCHOOL, ON SCHOOL BUS, OR AT SCHOOL BUS STOP

_____ *(Defendant)* is charged with the offense of possessing a firearm [at a public or private school] [or] [in or upon a school bus] [or] [at a school bus stop]. To sustain this charge the state must prove beyond a reasonable doubt that _____ *(defendant)* possessed a firearm:

[upon the developed property of a public school or private school (K through 12).] [or]

[in or upon any school bus.] [or]

[at any school bus stop identified on the route lists published by a school district each year.]

Definition

"Firearm."—means any device designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

NOTE ON USE

Act 746 of 2013 amended Ark. Code Ann. § 5-73-119 (e) to provide that possessing a handgun or firearm is "permissible" under stated circumstances. Formerly, the statute provided that the enunciated circumstances were defenses to the charge, and the defense is covered in AMCI 2d 7309-D. The import of this amendment, including a possible shift in the burden of proof, will be decided by the courts. Counsel needs to consider Act 746 and possibly modify 7309 by reference to the elements in 7309-D.

COMMENT

Ark. Code Ann. § 5-73-119(a)(2)(A). Possession of a firearm at a school or bus stop or on a bus is a Class D felony.

The fact that a firearm is "temporarily inoperable when school officials discover it" does not prevent prosecution under Ark. Code Ann. § 5-73-119. *S.T. and C.B. v. State,* 318 Ark. 499 (1994). The minor defendants were found delinquent for possessing a handgun at school even though parts were missing from the handgun, making its firing impossible, at the time school officials seized it. The Court also pointed out that the definition of a handgun at § 5-73-119(b) does not contain a requirement that a handgun be capable of firing at the time of possession. The Court withheld opinion on whether a successful defense could be based on a showing that, because of corrosion, for example, the handgun could not possibly be discharged.

Pursuant to § 5-73-119(1)(2)(A0 was amended by 1994 Ark. Acts 58 to apply

to private as well as public facilities. Act 1282 of 1999 broadened the offense to cover all firearms. Prior to the 1999 change only handguns were covered.

AMCI 2d 7309-D
POSSESSION OF HANDGUN AT PUBLIC OR PRIVATE SCHOOL, ON SCHOOL BUS, OR AT SCHOOL BUS STOP—DEFENSE

It is a defense to the charge of possessing a handgun [at a public or private school] [or] [on a school bus] [or] [at a school bus stop] that at the time of the act of possessing it the defendant:

[Was in his own (dwelling) (or) (place of business) (or) (on property in which he had a possessory or proprietary interest) except upon the property of a public or private institution of higher learning.]

[Was a (law enforcement officer) (correctional officer) (member of the armed forces) acting in the course and scope of his official duties.]

[Was assisting a (law enforcement officer) (correctional officer) (member of the armed forces) acting in the course and scope of official duties, pursuant to the direction or request of such (law enforcement officer) (correctional officer) (member of the armed forces).]

[Was a registered commissioned security guard acting in the course and scope of his duties.]

[Was hunting game which Arkansas Game and Fish Commission rules and regulations allow to be hunted with a handgun or firearm.]

[Was on his way to or from a hunting area for the purpose of hunting game which Arkansas Game and Fish Commission rules and regulations allow to be hunted with a handgun or firearm.]

[Was a certified law enforcement officer on or off-duty.]

[Was on a journey beyond the county in which he or she lived and was at least nineteen (19) years old.]

[Was participating (in a certified hunting safety course sponsored by the Arkansas Game and Fish Commission) (in a firearm safety course recognized and approved by [the Arkansas Game and Fish Commission] [a state or national nonprofit organization qualified and experienced in firearm safety]).]

[Was participating in a school-approved educational course or sporting activity involving the use of firearms.]

[Was a minor engaged in (lawful marksmanship competition or practice) (lawful recreational shooting) under the supervision of his (parent) (legal guardian) (other person 21 years of age or older standing in loco parentis) (or) (was traveling to or from a lawful marksmanship competition or practice or other lawful recreational shooting with an unloaded firearm accompanied by (his parent) (his legal guardian) (other person 21 years of age or older standing in loco parentis).

The defendant, in asserting the defense, is required only to raise a reasonable doubt in your minds. Consequently, if you believe that the defense has been shown to exist, or if the evidence with regard to the defense leaves

you with a reasonable doubt as to the defendant's guilt, then you must find him not guilty.

Definition

"Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it would be helpful to the jury.

Act 746 of 2013 amended Ark. Code Ann. § 5-73-119 (e) to provide that possessing a handgun or firearm is "permissible" under stated circumstances. Formerly, the statute provided that the enunciated circumstances were defenses to the charge. The import of this amendment, including a possible shift in the burden of proof, will be decided by the courts. Counsel needs to consider Act 746 and possibly modify 7309 by reference to the elements in 7309-D.

See Section 5-73-119 e (6)(B) if there is an issue regarding an off-duty officer's possession of valid identification.

COMMENT

Ark. Code Ann. § 5-73-119 (c). "Law enforcement officer" is defined in Ark. Code Ann. § 5-1-102.

The enumerated defenses are not designated by the Code as affirmative defenses. Therefore, under Ark. Code Ann. § 5-1-111(c), if there is evidence to support one of the defenses it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

For Arkansas cases dealing with the "journey" defense, see *Riggins v. State*, 17 Ark. App. 68, 703 S.W.2d 463 (1986); *Woodell v. State*, 260 Ark. 786, 543 S.W.2d 957 (1976); *Collins v. State*, 183 Ark. 425, 36 S.W.2d 75 (1931); *Ellington v. Town of Denning*, 99 Ark. 236, 138 S.W. 453 (1911); *Ackerson v. State*, 76 Ark. 301, 89 S.W. 550 (1905); *Holland v. State*, 73 Ark. 425, 84 S.W. 468 (1904); *Hathcote v. State*, 55 Ark. 181, 17 S.W. 721 (1891); *Davis v. State*, 45 Ark. 359 (1885).

AMCI 2d 7310
POSSESSION OF HANDGUN ON PROPERTY OF PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION

_____ *(Defendant(s))* [is] [are] charged with the offense of possessing a handgun on the property of a ___[public]___ ___[private]___ institution of higher education. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* possessed a handgun upon the property of a ___[public]___ ___[private]___ institution of higher education [on or about his person] [or] [in a vehicle occupied by him] [or] [otherwise readily available for use] with a purpose to employ it as a weapon against a person.

Definitions

"Firearm."—means any device designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Handgun."—means any firearm with a barrel length of less than 12 inches that is designed, made, or adapted to be fired with one hand.

"Purpose."—A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

If one of the defenses set out in Ark. Code Ann. § 5-73-119(c) is interposed, then AMCI 2d 7309-D, appropriately modified, should be given.

COMMENT

Ark. Code Ann. § 5-73-119(a)(3)(A). This offense is a Class D felony.

Ark. Code Ann § 5-73-119(a)(3)(A) has a complicated history. 1989 Ark. Acts 649, the original act, prohibited handgun possession at the public schools and in school buses, but not at institutions of higher education. 1993 Ark. Acts 1166 amended Ark. Code Ann § 5-73-119 to add subsection (3)(A) prohibiting the possession of a handgun on the property of a publicly-supported institution of higher education. However, 1993 Ark. Acts 1189 reenacted § 5-73-119 without this subsection. Neither act had an emergency clause, so they went into effect on the same date. It was the view of the Committee that, because Acts 1166 and 1189 went into effect simultaneously, Act 1189 did not repeal any portion of Act 1166 by implication, and the conflicting versions of S. 5-73-119(a) should be reconciled by giving effect to both acts. *See Arkansas Railroad Commission v. Stout Lumber Co.,* 161 Ark. 164, 171, 255 S.W. 912, 914 (1923), quoting from *Smith v. People,* 47 N.Y. 330: "Statutes enacted at the same session of the Legislature should

receive a construction, if possible, which will give effect to each."

The Legislature's latest utterance on this subject, 1994 Ark. Acts 57 (Second Extraordinary Session), reenacted, as § 5-73-119(a)(3)(A), the handgun prohibition at institutions of higher education, this time including private institutions as well. It is now clear that § 5-73-119 covers institutions of higher education as well as public and private schools.

AMCI 2d 7310-D
POSSESSION OF HANDGUN ON PROPERTY OF PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION—DEFENSE

It is a defense to the charge of possessing a handgun on the property of ___[public]___ ___[private]___ institution of higher education that at the time of the act of possessing the handgun, the defendant:

[Was in his own (dwelling) (or) (place of business) (or) (on property in which he has a possessory or proprietary interest).]

[Was a (law enforcement officer) (prison guard) (member of the armed forces) acting in the course and scope of his official duties.]

[Was assisting a (law enforcement officer) (prison guard) (member of the armed forces) acting in the course and scope of official duties, pursuant to the direction or request of such (law enforcement officer) (prison guard) (member of the armed forces).]

[Was a licensed security guard acting in the course and scope of his duties.]

[Was hunting game which Arkansas Game and Fish Commission ruled and regulations allow to be hunted with a handgun.]

[Was a certified law enforcement officer on or off-duty.]

[Was on a journey and was at least nineteen (19) years old.]

[Was participating (in a certified hunting safety course sponsored by the Arkansas Game and Fish Commission) (in a firearm safety course recognized and approved by [the Arkansas Game and Fish Commission] [a state or national nonprofit organization qualified and experienced in firearm safety]).]

[Was participating in a school-approved educational course or sporting activity involving the use of firearms.]

[Was a minor engaged in (lawful marksmanship competition or practice) (lawful recreational shooting) under the supervision of (his parent) (his legal guardian) (other person 21 years of age or older standing in loco parentis) (or) (was traveling to or from such activity with an unloaded firearm accompanied by (his parent) (his legal guardian) (other person 21 years of age or older standing in loco parentis).

The defendant in asserting the defense, is required only to raise a reasonable doubt in your minds. Consequently, if you believe that the defense has been shown to exist, or if the evidence with regard to the defense leaves you with reasonable doubt as to the defendant's guilt, then you must find him not guilty.

Definition

"Law enforcement officer."—means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

NOTE ON USE

The definition should be given when requested by counsel or when the court feels that it will be helpful to the jury.

See Section 5-73-119 e (6)(B) if there is an issue regarding an off-duty officer's possession of valid identification.

COMMENT

Ark. Code Ann. § 5-73-119(c). "Law enforcement officer" is defined in Ark. Code Ann. § 5-1-102.

The enumerated defenses are not designated by the Code as affirmative defenses. Therefore, under Ark. Code Ann. § 5-1-111(c), if there is evidence to support one of the defenses it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

For Arkansas cases dealing with the "journey" defense, *see Riggins v. State*, 17 Ark. App. 68, 703 S.W. 2d 463 (1986); *Woodall v. State*, 260 Ark. 786, 543 S.W.2d 957 (1976); *Collins v. State*; 183 Ark. 425, 36 S.W. 2d 75 (1931); *Ellington v. Town of Denning*, 99 Ark. 236, 138 S.W. 453 (1911); *Ackerson v. State*, 76 Ark. 301, 89 S.W. 550 (1905); *Holland v. State,* 73 Ark 425, 84 S.W. 468 (1904); *Hathcote v. State*, 55 Ark. 181, 17 S.W. 721; *Davis v. State*, 45 Ark. 359 (1885).

AMCI 2d 7311 FURNISHING A HANDGUN TO A FELON

_____ *(Defendant(s))* [is] [are] charged with the offense of furnishing a handgun to a felon. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* [(sold) (or) (bartered) (or) (leased) (or) (gave) (or) (rented)] [(or) (otherwise furnished)] a handgun to a person who _____ *defendant(s))* knew [had been found guilty of] [had pled (guilty) (nolo contendere) to] a felony.

Definitions

"Firearm."—means any devise designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Handgun."—means any firearm capable of firing rimfire ammunition or centerfire ammunition, and which is designed or constructed to be fired with one hand.

"Knowingly."—A defendant acts knowingly with respect to an attendant circumstance (i.e., whether _____ *(alleged felon)* had been convicted of, or pled guilty or nolo contendere to, a felony) when the defendant is aware that the circumstance exists.

NOTE ON USE

The definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann. § 5-73-129(a). Furnishing a handgun to a felon is a Class B felony.

AMCI 2d 7312
FURNISHING A PROHIBITED WEAPON TO A FELON

_____ *(Defendant(s))* [is] [are] charged with the offense of furnishing a prohibited weapon to a felon. To sustain this charge the State must prove beyond a reasonable doubt that _____ *(defendant(s))* [(sold) (or) (bartered) (or) (leased) (or) (gave) (or) (rented)] [(or) (otherwise furnished)] to a person who *defendant(s))* knew [had been found guilty of] [had pled (guilty) (nolo contendere) to] a felony.)]

[a bomb.]

[metal knuckles.]

[a defaced firearm.]

[an implement for the infliction of serious physical injury or death that serves no lawful purpose.

Definitions

"Firearm."—means any devise designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

"Defaced firearm."—means a firearm on which the manufacturer's serial number or other identification mark required by law has been removed, marred, altered, covered, or destroyed.

"Serious physical injury."—means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

NOTE ON USE

Definitions should be given when requested by counsel or when the court feels that they will be helpful to the jury.

COMMENT

Ark. Code Ann § 5-73-129(b). Furnishing a prohibited weapon to a felon is a Class B felony. The definition of "defaced firearm" is drawn from Ark. Code Ann. § 5-73-106, 107. The definitions of "firearms," "sawed-off shotgun," "sawed-off rifle," and "serious physical injury" are taken from Ark. Code Ann. § 5-1-102.

AMCI 2d 7313
POSSESSION OF HANDGUN IN A COURTROOM

_____ *(Defendant(s))* [is] [are] charged with the offense of possessing a handgun in a courtroom. To sustain this charge the State must prove beyond a reasonable doubt that _____ *defendant(s))* possessed a handgun in a courtroom.

Definition

"Handgun."—means any firearm capable of firing a rimfire ammunition or centerfire ammunition, and which is designed or constructed to be fired with one hand.

NOTE ON USE

This instruction may be modified for use for other violations of Ark. Code Ann. § 5-73-122(a) (carrying a firearm in publicly owned buildings or facilities). These violations are Class A misdemeanors.

COMMENT

Ark. Code Ann. § 5-73-122(b). Possession of a handgun in a courtroom is a Class D felony.

AMCI 2d 7313-D
POSSESSION OF A HANDGUN IN A COURTROOM—DEFENSE

It is a defense to the charge of possessing a handgun in a courtroom that at the time of the act of possessing it the defendant:

[Was a (law enforcement officer on or off-duty) (an officer of the court) (a bailiff).]

[Was authorized by the court to do so.]

The defendant, in asserting the defense, is required only to raise a reasonable doubt in your minds. Consequently, if you believe that the defense has shown to exist, or if the evidence with regard to the defense leaves you with a reasonable doubt as to the defendant's guilt, then you must find him not guilty.

Definition

"Law enforcement officer."—means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

NOTE ON USE

The definition should be given when requested counsel or when the court feels that it will be helpful to the jury.

See Ark. Code Ann. Section 5-73-122 (d) and (e) regarding requirement for an off-duty law enforcement officer to have valid identification and effect if officer is a party or witness in a case.

COMMENT

Ark. Code Ann. § 5-73-122(b). "Law enforcement officer" is defined in Ark. Code Ann. § 5-1-102.

The enumerated defenses are not designated by the Code as affirmative defenses. Therefore, under Ark. Code Ann § 5-1-111(c), if there is evidence to support one of the defenses it must be submitted to the jury, and the jury must be told that any reasonable doubt on that issue requires that the defendant be acquitted.

CHAPTER 74

CRIMINAL GANG, ORGANIZATION, OR ENTERPRISE

SYNOPSIS

7400. Introductory Note

7401. Continuing Criminal Gang, Organization, or Enterprise in the First Degree

7401.–PUF. Primary and Underlying Felonies–Continuing Criminal Gang, Organization, or Enterprise in the First Degree

7402. Unauthorized Use of Property to Facilitate Offense

7403. Soliciting a Minor to Become or Remain a Member of a Gang

NOTE: Simultaneous Possession of Drugs and Firearms — SEE AMCI 2d 6420

§ AMCI 2d 7400
INTRODUCTORY NOTE

Ark. Code Ann. § 5-74-108 provides that, where a defendant is convicted of committing a crime of violence in concert with two or more other persons, the penalty range is "increased by one classification." Section 5-74-108(c). A special Stage-One explanatory instruction and verdict form permitting the jury to make a finding on the acting-in-concert allegation should be used in all cases where this allegation is made. *See, e.g.*, AMCI 2d 1201-EXP and 1201-VF.

AMCI 2d 7401
CONTINUING CRIMINAL GANG, ORGANIZATION, OR ENTERPRISE IN THE FIRST DEGREE

_____*(Defendant(s))* [is] [are] **charged with the offense of engaging in a continuing criminal** [gang] [organization] [enterprise] **in the first degree. To sustain this charge, the State must prove beyond a reasonable doubt that:**

First: He [committed] [attempted to commit] [solicited the commission of] _____*(felony offense of violence or pecuniary gain)*; **and**

Second: This offense was part of a continuing series of two (2) or more other felony offenses of violence or pecuniary gain: namely_____ (at least two felony offenses of violence or pecuniary gain); and

Third: With respect to the commission of these offenses, _____(defendant(s)) organized, supervised, or managed two (2) or more other persons with whom he acted in concert.

Definitions

"Offense of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or persons, specifically including rape.

"Offense of pecuniary gain" means any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 7401-PUF, defining the primary and underlying offenses. The definitions should be given in every case. In cases involving more than one defendant, upon request the court should repeat both instructions for each defendant.

The punishment of a continuing criminal gang offense is geared to the penalty for the underlying offense mentioned in paragraph First. Consecutive sentences are required. *See* Note on Use to AMCI 2d 7401-PUF. Use AMCI 2d 7401 and 7401-PUF in conjunction with AMCI 2d 8101 and 8301-VF in stage one, and with the appropriately modified standard punishment instructions and verdict forms in stage two.

If the defendant is charged with an attempt or solicitation, appropriate instructions from AMCI 2d Chapter 5 should be given in AMCI 2d 7401-PUF.

Continuing criminal gang offenses in the second degree differ from first degree offenses only in that the State is not required in a second degree prosecution to prove that the defendant acted in a supervisory, managerial, or organizational capacity. With appropriate modifications, AMCI 2d 7401 and 7401-PUF may be used in a second degree prosecution.

COMMENT

Ark. Code Ann. § 5-74-104. Definitions are found at Ark. Code Ann. § 5-74-103.

The wording of Ark. Code Ann. § 5-74-104(a)(2) is virtually identical to that of Ark. Code Ann. § 5-64-414(a)(2), which appears to have been interpreted by the Arkansas Supreme Court to require proof of two felonies in addition to the primary felony. *Hughey v. State*, 310 Ark. 721, 840 S.W.2d 183 (1992). Therefore, this instruction, like AMCI 2d 6415, given in § 5-64-414 cases, requires proof of three felonies for conviction.

Reversing the trial court's ruling and turning aside double jeopardy arguments based on the federal and state Constitutions and Ark. Code Ann. § 5-1-110 (Repl. 1993), the Arkansas Supreme Court, in *Moore v. State*, 321 Ark. 249, 261, 903 S.W.2d 154, 160 (1995), held that a defendant tried under Ark. Code Ann. § 5-64-114 (Repl. 1993) may be punished separately for both predicate offenses and continuing criminal enterprise offenses based on them.

1995 Ark. Acts 657 amended Ark. Code Ann. § 5-1-110 to permit separate convictions for both (1) capital felony murder, first degree felony murder, and continuing criminal enterprise and (2) any underlying felonies (or predicate felonies in continuing criminal enterprise prosecutions) proved as an element of the murder or criminal enterprise.

AMCI 2d 7401-PUF
PRIMARY AND UNDERLYING FELONIES — CONTINUING CRIMINAL GANG, ORGANIZATION, OR ENTERPRISE IN THE FIRST DEGREE

As a part of the charge of continuing criminal gang, organization, or enterprise in the first degree, the State contends that_____(defendant(s)) [committed] [attempted to commit] [solicited the commission of] _____ *(felony offense of violence or pecuniary gain in paragraph First of AMCI 2d 7401).* **To prove this offense, the State must prove beyond a reasonable doubt:**

[insert appropriate elements from instructions on applicable offense.]

In addition, as part of the charge of continuing criminal organization, or enterprise, the State contends that_____(paragraph First offense above) was part of a continuing series of two or more felony offenses, namely_____(specify at least two felony offenses of violence or pecuniary gain).

To prove_____(first additional felony offense of violence or pecuniary gain), the State must prove beyond a reasonable doubt:

[insert appropriate elements from instructions on applicable offense.]

To prove_____(second felony offense of violence or pecuniary gain), the State must prove beyond a reasonable doubt:

[insert appropriate elements from instructions on applicable offense.]

Definitions

"Offense of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or persons, specifically including rape.

"Offense of pecuniary gain" means any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.

NOTE ON USE

A charge of continuing criminal gang, organization, or enterprise in the first degree requires proof of at least three felonies. This instruction is designed for use in defining these felonies, and it should be given in every prosecution under the continuing criminal gang statute. If the State has alleged that the continuing series consisted of more than three offenses, then the instruction should be appropriately modified to name and define each additional offense. If the defendant is charged with attempt or solicitation, appropriate instructions from AMCI 2d Chapter 5 should be given as part of this instruction.

Ark. Code Ann. § 5-74-104(a)(3) sets out the following special grading scheme:

A person who engages in a continuing criminal gang, organization or enterprise in the first degree

is guilty of a felony two classifications higher than the classification of the highest underlying predicate offense referenced in subdivision (a)(1) of this section. A person who engages in a continuing criminal gang, organization or enterprise where the underlying predicate offense is a Class A or Y felony shall be guilty of a Class Y felony.

Ark. Code Ann. § 5-74-104(c) provides that "any sentence of imprisonment imposed pursuant to this section shall be in addition to any sentence imposed for the violation of a predicate criminal offense."

AMCI 2d 7401 and 7401-PUF should be used in conjunction with AMCI 2d 8101 and 8301-VF in stage one, and with the appropriately modified standard punishment instructions and verdict forms in stage two.

COMMENT

Ark. Code Ann. § 5-74-104.

The wording of Ark. Code Ann. § 5-74-104(a)(2) is virtually identical to that of Ark. Code Ann. § 5-64-414(a)(2), which appears to have been interpreted by the Arkansas Supreme Court to require proof of two felonies in addition to the primary felony. *Hughey v. State,* 310 Ark. 721, 840 S.W.2d 183 (1992). Therefore, this instruction, like AMCI 2d 6415, given in § 5-64-414 cases, requires proof of three felonies for conviction.

Reversing the trial court's ruling and turning aside double jeopardy arguments based on the federal and state Constitutions and Ark. Code Ann. § 5-1-110 (Repl. 1993), the Arkansas Supreme Court, in *Moore v. State,* 321 Ark. 249, 261, 903 S.W.2d 154, 160 (1995), held that a defendant tried under Ark. Code Ann. § 5-64-114 (Repl. 1993) may be punished separately for both predicate offenses and continuing criminal enterprise offenses based on them.

1995 Ark. Acts 657 amended Ark. Code Ann. § 5-1-110 to permit separate convictions for both (1) capital felony murder, first degree felony murder, and continuing criminal enterprise and (2) any underlying felonies (or predicate felonies in continuing criminal enterprise prosecutions) proved as an element of the murder or criminal enterprise.

AMCI 2d 7402
UNAUTHORIZED USE OF PROPERTY TO FACILITATE OFFENSE

_____*(Defendant(s))* [is] [are] **charged with the offense of unauthorized use of another person's property to facilitate a crime. To sustain this charge the State must prove beyond a reasonable doubt that**_____**(defendant(s)) knowingly used** [the property of (another person) _____]*(another person)* [_____] *(the property of another person)* **without** [the owner's knowledge] [_____*(the owner's)* knowledge] **to facilitate in any way**_____**(a felony or misdemeanor offense of violence or pecuniary gain).**

Definitions

"Knowingly." A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Offense of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or persons, specifically including rape.

"Offense of pecuniary gain" means any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.

NOTE ON USE

The definitions should be given in every case.

Ark. Code Ann. §§ 5-74-101 *et seq.*, does not define the term "facilitate" which is not a term of art in the Arkansas Criminal Code. Black's Law Dictionary (4th Edition: 1957) defines "facilitate" as follows: "To make easy or less difficult, or to free from difficulty or impediment," (citing *Pon Wing Quong v. United States,* 111 F.2d 751, 756 (9th Cir., 1940)).

COMMENT

Ark. Code Ann. § 5-74-105. "Knowingly" is defined in Ark. Code Ann. § 5-2-202.

Unauthorized use of property is a Class B felony.

AMCI 2d 7403
SOLICITING A MINOR TO BECOME OR REMAIN A MEMBER OF A GANG

_____*(Defendant(s))* [is] [are] **charged with the offense of soliciting a minor to** [become] [remain] **a member of a gang. To sustain this charge the State must prove beyond a reasonable doubt that** _____**defendant(s), by intimidation or duress,** [(caused) (or) (aided) (or) (abetted) (or) (encouraged) (or) (solicited) (or) (recruited)] [(a minor) (_____)*(a minor)*] **to** [become] [or] [remain] **a member of any group that**_____**(defendant(s)) knew to be a criminal** [(gang) (or) (organization) (or) (enterprise).]

Definitions

"Criminal gang, organization, or enterprise" means any group of three (3) or more individuals who commit a continuing series of two (2) or more predicate criminal offenses which are undertaken in concert with each other.

"Predicate criminal offense" means any crime of violence or pecuniary gain.

"Crime of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or person, specifically including rape.

"Crime of pecuniary gain" means any violation of Arkansas law that results, or is intended to result, in the defendant receiving income, benefit, property, money or anything of value.

"Knowingly."—A defendant acts knowingly with respect to an attendant circumstance (i.e., whether a group was a criminal gang, organization, or enterprise) when the defendant is aware that the circumstance exists.

NOTE ON USE

The first four definitions should be given in every case. "Knowingly" should be defined when requested by counsel or when the Court believes it would be helpful to the jury. Use this instruction in conjunction with AMCI 2d 8101 and 8104.

In Stage Two of the trial, use an appropriately modified version of AMCI 2d 9201 with 9304-VF and 9305-VF if it is alleged that the defendant has previously been found guilty or pleaded nolo contendere to this offense.

COMMENT

Ark. Code Ann. § 5-74-201 to -203.

This offense can be either a Class B or C felony.

CHAPTER 80

SENTENCING: INTRODUCTION

SYNOPSIS

8000. Sentencing: Introduction to Chapters 81–94

§ AMCI 2d 8000
SENTENCING: INTRODUCTION TO CHAPTERS 81–94

1993 Ark. Acts 551, for the most part codified at Ark. Code Ann. §§ 5-4-103 (Repl. 1993) and 16-97-101 to -104 (Supp. 1993), sets out Arkansas's new bifurcated trial procedure. Section 7 of Act 551, which is uncodified, provides: "The bifurcation procedures in Sections 1 and 2 of this act shall become effective on January 1, 1994.. . ." Because the act has procedural effects only and does not affect, for instance, the length of the sentence that may be imposed, the Committee's view is that the act applies in felony jury trials commencing on or after January 1, 1994, regardless of when the offense is alleged to have been committed. *See Jennings v. State*, 276 Ark. 217, 633 S.W.2d 373 (1982), construing Ark. Const., art. 2, § 17. The Arkansas Supreme Court has also upheld the act against a challenge under the *Ex Post Facto* Clause of the federal Constitution. *Williams v. State*, 318 Ark. 846, 887 S.W.2d 530 (1994); *Diffee v. State*, 319 Ark. 669, 894 S.W.2d 564 (1995).

Chapters 81–83 and 90–94 contain standard punishment instructions and verdict forms. Chapters 81–83 govern Stage-One proceedings in which the jury returns a verdict on the question of guilt; Chapters 90–94 govern Stage-Two proceedings in which a jury that has returned a verdict of guilt imposes sentence.

Offenses defined in the Arkansas Criminal Code may be crudely divided into two categories: those for which only a single penalty is provided and those for which special bi- or tri-partite grading schemes are set out. Examples of the first category are offenses such as burglary and rape, where the jury is called on only to decide whether the defendant engaged in certain conduct. Instructions for these "routine," single penalty offenses are designed for use with the standard Stage-One instructions (Chapters 81–83) and the standard Stage-Two instructions (Chapters 90–94).

In the second category are cases where the jury must go further to make additional findings about, for instance, the monetary amount of damage done (criminal mischief) or the value of property stolen (theft). These offenses have special grading schemes and appear in the substantive offense chapters in this book accompanied by explanatory instructions and verdict forms designed for use in Stage One in conjunction with the standard concluding instructions 8103 and 8104. The result of those instructions and findings will then dictate the appropriate standard forms from Chapters 90–94 to be used in Stage Two.

In Stage One of every jury trial, either the standard Stage-One instructions and verdict forms or, if the offense is one requiring special instructions, a special explanatory instruction and verdict form will be used. In Stage Two, the standard instructions on sentencing will be used, regardless of whether special instructions were used in Stage One. Where used, the special verdict form findings in Stage One will determine the selection of the standard sentencing instruction and verdict form for Stage Two.

CHAPTER 81

STAGE ONE: CONCLUDING INSTRUCTIONS

SYNOPSIS

8101. Stage One: Standard Concluding Instructions—Findings

8102. Stage One: Jury to Reach Agreement if Possible—Deadlocked Jury

8103. Stage One: Standard Concluding Instructions—Jury not to Consider Punishment

8104. Stage One: Standard Closing Instructions

AMCI 2d 8101
STAGE ONE: STANDARD CONCLUDING INSTRUCTIONS—FINDINGS

If you find _____ *(defendant)* **guilty of** _____ *(offense(s))* [as charged], **you will so indicate on a verdict form to be given you. If you find** _____ *(defendant)* **not guilty, you will so indicate on the appropriate verdict form.**

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 8301.

Where the jury has been instructed on lesser included offenses, these offenses should be listed in the alternative, and the bracketed language "as charged" should be omitted.

Where the jury has been instructed on lesser included offenses requiring the giving of a special EXP instruction and a special verdict form, AMCI 2d 8101 may be appropriately modified so that it may be combined with the EXP instruction. *See* AMCI 2d 9502 (Illustrative Instructions: Burglary) para. 13.

AMCI 2d 8102
STAGE ONE: JURY TO REACH AGREEMENT IF POSSIBLE—DEADLOCKED JURY

It is in the interest of the State of Arkansas and of the defendant(s) for you to reach an agreement in this case, if at all possible. A hung jury means a continuation of the case and a delay in the administration of justice.

You should consider that this case will have to be decided by some jury and, in all probability, upon the same testimony and evidence. It is unlikely that the case will ever be submitted to 12 people more intelligent, more impartial, or more competent to decide it.

Under your oath as jurors, you have obligated yourselves to render verdicts in accordance with the law and the evidence. In your deliberations you should weigh and discuss the evidence and make every reasonable effort to harmonize your individual views on the merits of the case. Each of you should give due consideration to the views and opinions of other jurors who disagree with your views and opinions. No juror should surrender his sincere beliefs in order to reach a verdict; to the contrary, the verdict should be the result of each juror's free and voluntary opinion. By what I have said as to the importance of the jury reaching a verdict, I do not intend to suggest or require that you surrender your conscientious conviction, only that each of you make every sincere effort to reach a proper verdict. Therefore, I request the jury to retire for further deliberation for a reasonable time in an attempt to reach a verdict.

NOTE ON USE

This instruction should not be given until the jury, after prolonged deliberation, has not reached a verdict. There is no definitive time line that must be applied by the trial court in addressing jury deliberations. The trial court did not abuse its discretion when it gave the jury the "dynamite" instruction after it had been deliberating for approximately an hour and a half. *Moore v. State*, 2015 Ark. App. 480, 469 S.W.3d 801. Trial court did not commit reversible error in giving this instruction after the jury deliberated for two hours. *Davis v. State*, 319 Ark. 460, 892 S.W. 2d 472 (1995). Trial court did not commit reversible error in giving this instruction after the jury deliberated for two hours and twenty minutes. *Bankston v. State*, 83 Ark. App. 53, 117 S.W.3d 623 (2003). The trial judge may wish to give this type of instruction in his own words. The above is submitted as a guide to avoid errors sometimes made.

COMMENT

The trial court may detail to the jury the ills attendant upon disagreement, the expense and length of time a case has been pending, the length of time it has taken to try the case, and that the case will have to be decided by some jury at some future time. *Stepp v. State*, 170 Ark. 1061, 282 S.W. 684 (1926); *McGaha v. State*, 216 Ark. 165, 224 S.W.2d 534 (1949). It is proper for the trial court to warn the jury to lay aside pride of opinion and consult with each other for the purpose of

harmonizing their views, if possible, and that it is their duty to apply the law as given by the court to the facts and deal with each other in a spirit of candor in order to arrive at a verdict, so long as the court does not comment on the evidence and makes it clear that no juror should surrender his sincere beliefs in order to reach a verdict. *Evans v. State*, 252 Ark. 335, 478 S.W.2d 874 (1972); *Hardin v. State*, 225 Ark. 602, 284 S.W.2d 111 (1955); *Benson v. State*, 149 Ark. 633, 233 S.W. 758 (1921).

There is no definitive time line that must be applied by the trial court in addressing jury deliberations. Thus, the trial court did not abuse its discretion when it gave the jury the "dynamite" instruction after it had been deliberating for approximately an hour and a half. *Moore v. State*, 2015 Ark. App. 480.

AMCI 2d 8103
STAGE ONE: STANDARD CONCLUDING INSTRUCTIONS—JURY NOT TO CONSIDER PUNISHMENT

In your deliberations the subject of punishment is not to be discussed or considered by you. If you return a verdict of guilty, the matter of punishment will be submitted to you separately.

NOTE ON USE

This instruction should be given immediately prior to the final closing instruction in stage one of all trials. Instructions and verdict forms for use in the second stage of trials are found in Chapters 90–94.

Only the first sentence of this instruction should be used if, pursuant to Ark. Code Ann. § 5-4-103(b)(4), the court is to fix punishment.

AMCI 2d 8104
STAGE ONE: STANDARD CLOSING INSTRUCTIONS

Members of the jury, when you reach the jury room you will elect one of your members as foreman.

You will consider and complete [one of] **the following verdict form[s].**

(Here the appropriate verdict form[s] will to be read to the jury.)

All twelve of you must agree on the verdict, but only the foreman need sign the verdict form.

(Here the closing arguments for Stage One will be made.)

The jury will now retire to the jury room to deliberate.

NOTE ON USE

This instruction should be read to the jury at the end of Stage One of the trial.

The verdict forms should be read to the jury in every case.

CHAPTER 82

STAGE ONE: ENHANCEMENT INSTRUCTIONS

SYNOPSIS

8200. Stage One—Introductory Note—Engaging in Violent Criminal Group Activity

8201-EXP-F. Stage One—Use of Firearm

8202. [Reserved]

8203-EXP. Stage One—Felony in Presence of Child

8204-EXP. Stage One—Methamphetamine Offense in Presence of Certain Persons

8205-EXP. Stage One—Controlled Substance Offense In Proximity To Certain Facilities

8206-EXP. Stage One—Targeting Law Enforcement Officer, First Responder, or Their Family

8207-EXP. Stage One—Extended Term Of Imprisonment—Targeting Victim At Church Or Other Place Of Worship—Serious Violent Felony

AMCI 2d 8200
STAGE ONE—INTRODUCTORY NOTE—ENGAGING IN VIOLENT CRIMINAL GROUP ACTIVITY

Under Ark. Code Ann. § 5-74-108, a person who commits a crime of violence while acting in concert with two or more other people is exposed to enhanced penalties. Enhancement takes the form of increasing the defendant's exposure to punishment by one grade—e.g., from class B felony punishment to class A felony punishment. Enhancement is mandatory. The instruction given the jury should state that, upon finding that the defendant committed a violent felony in concert with two or more other people, the jury must sentence the defendant to the higher classification. Moreover, the fact that the group was not a criminal gang, organization, or enterprise is not a defense.

Whether a defendant has committed a crime of violence in concert with two or more other people should be determined in Stage One by use of an instruction explicitly permitting such a finding. If there are findings of guilt and concerted action, the Stage-Two verdict form should be appropriately modified to require imposition of enhanced punishment.

Because there are many crimes of violence defined by the Arkansas Criminal Code and dealt with in this book, no standard language has been included in instructions on violent crimes throughout this book.

AMCI 2d 8201-EXP-F
STAGE ONE—USE OF FIREARM

The State has alleged that _____*(defendant)* employed a firearm as a means of (committing) (or) (escaping from the commission of) _____*(felony)*. To sustain this allegation the State must prove beyond a reasonable doubt that _____*(defendant)* employed a firearm as a means of (committing) (or) (escaping from the commission of) the alleged _____ *(felony)* [or *(list any lesser included felonies submitted to jury)*].

If you find _____ *(defendant)* guilty of the offense of _____ *(felony)* [or *(list any lesser included felonies submitted to jury)*], you will so indicate on the verdict form(s) provided you. You will also make a finding about whether _____ *(defendant)* employed a firearm as a means of (committing) (or) (escaping from the commission of) the offense.

If you reach a verdict of not guilty, you will indicate this on the form.

Definitions

"Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

NOTE ON USE

The definition of "firearm" should be given when requested by counsel or when the court feels that it would be helpful to the jury. The definition of "firearm" is taken from Ark. Code Ann. § 5-1-102.

This instruction should be used in conjunction with AMCI 2d 8302-VF when the defendant is charged with having employed a firearm as a means of committing or escaping from a felony.

Act 1047 of 2007 added subsection (e) to § 16-90-120 addressing eligibility for parole or transfer to community correction, and it applies to felony offenses involving the use of a firearm committed on or after July 31, 2007. For subsection (e)(1)(A), use part II of AMCI 2d 9404, for subsection (e) (1)(B), use part III of AMCI 2d 9404, and for subsection (e)(1)(C), use either AMCI 2d 9401 or 9402. However, § 16-90-120 (e)(2) further provides that the sentencing court may waive the foregoing if all of the following circumstances exist: (A) The defendant was a juvenile when the offense was committed; (B) The defendant was merely an accomplice to the offense; and (C) The offense was committed on or after the effective date of the act. Modification of these instructions may be required.

COMMENT

Ark. Code Ann. § 16-90-120 provides that a defendant convicted of a felony who employs a firearm as a means of committing or escaping from the felony may be subjected to an additional period of imprisonment of up to 15 years.

In *Watson v. State*, 71 Ark. App. 52, 26 S.W.3d 588 (2000), the jury found the defendant guilty of second-degree murder and fixed his imprisonment at 20 years. The jury also found that defendant used a firearm in the commission of the felony but was not asked to fix a term of imprisonment. After the jury was dismissed, the court imposed an additional term of imprisonment of 15 years based on the use of the firearm. The Court of Appeals ruled that the jury, not the court, should have determined the extent to which the sentence should have been enhanced for the use of a firearm and reduced the sentence to 20 years. *See, also, Johnson v. State*, 249 Ark. 208, 458 S.W.2d 409 (1970), holding that a defendant could not be subjected to an additional period of confinement for use of a firearm in the absence of a jury finding that a firearm had been used in the commission of a felony. Both cases also hold that the information must charge the defendant with the use of a firearm.

Trial court did not err in giving this instruction when state sought a sentencing enhancement for defendant's use of a firearm pursuant to Ark. Code Ann. § 16-90-190. *Neely v. State*, 2010 Ark. 452, 370 S.W.3d 820 (2010).

In *Martinez v. State*, 2019 Ark. 85, appellant was convicted of capital murder, unlawful discharge of a firearm from a vehicle, and terroristic act. His sentence was enhanced by the provisions of Ark. Code Ann. § 16-90-120(a), which permit an enhanced sentence for employing a firearm in the commission of a felony. The jury was given an instruction on the enhancement and provided a verdict form for the enhancement. The verdict form was not completed, and the jury did not render a specific verdict on the enhancement in open court. However, appellant's sentence was enhanced pursuant to the statute. On appeal, appellant asserted that his sentence was illegal because the jury did make a finding on the enhancement. The Supreme Court concluded that based upon the facts of the case, the sentence was not illegal. Specifically, the information alleged that appellant used a firearm in the commission of a felony, and the jury found appellant guilty beyond a reasonable doubt of unlawful discharge of a firearm, a Class Y felony. The jury also found that appellant shot a firearm from a vehicle and killed a person, which resulted in appellant being charged with and convicted of capital murder. The convictions for capital murder and unlawful discharge of a firearm required the jury to find beyond a reasonable doubt that appellant used a firearm in the commission of the capital murder. Additionally, the court noted that because the enhancement was not a substantive offense, but rather a sentencing enhancement, the findings of guilt made by the jury were sufficient to trigger the application of Ark. Code Ann. § 16-90-120.

AMCI 2d 8202 RESERVED

AMCI 2d 8203-EXP
STAGE ONE—FELONY IN PRESENCE OF CHILD

The State has alleged that _____ *(defendant)* committed the offense of _____ *(felony)* in the presence of a child. To sustain this allegation the State must prove beyond a reasonable doubt that _____ *(defendant)* committed the offense of _____ *(felony)* (in the physical presence of a person under 18 years of age) (or) (knowing or having reason to know that a person under 18 years of age was present and might see or hear an act of _____ *(felony)*).

If you find _____ *(defendant)* guilty of the offense of _____ *(felony)*, you will so indicate on the verdict form(s) provided you. You will also make a finding about whether _____ *(defendant)* committed the offense in the presence of a child. If you reach a verdict of not guilty, you will indicate this on the form.

NOTE ON USE

The 2019 amendments to this section rewrote the eligible felonies, removing Manslaughter and adding Aggravated Robbery, Rape and Sexual Assault in the Second Degree. This instruction should be used in conjunction with AMCI 2d 8303-VF when the defendant is charged with having committed in the presence of a child any of the following offenses:

Capital murder, § 5-10-101;

Murder in the first degree, § 5-10-102;

Murder in the second degree, § 5-10-103;

Aggravated robbery, § 5-12-103;

A felony offense of assault or battery under § 5-13-201 et seq.;

Rape, § 5-14-103;

Sexual assault in the second degree, § 5-14-125; or

A felony offense of domestic battering or assault on a family or household member under § 5-26-303–§ 5-26-3

The instruction should be given in addition to the instruction for the underlying felony.

COMMENT

Ark. Code Ann. § 5-4-702(a) provides that a defendant who commits homicide, assault, battery, domestic battering, or assault on a family member or household member in the presence of a child may be subjected to an additional period of imprisonment of not less than 1 and not more than 10 years.

Ark. Code Ann. § 5-4-702(b) provides that a defendant who commits aggravated cruelty to a dog, cat, or equine (§ 5-62-104) in the presence of a child may be subjected to an additional period of imprisonment not to exceed five years.

AMCI 2d 8204-EXP
STAGE ONE—METHAMPHETAMINE OFFENSE IN PRESENCE OF CERTAIN PERSONS

The State has alleged that _____ *(defendant)* committed the offense of (manufacture of methamphetamine) (or) (possession of drug paraphernalia with the purpose to manufacture methamphetamine) in the presence of (a minor) (an elderly person) (an incompetent person). To sustain this allegation, the State must prove beyond a reasonable doubt that _____ *(defendant)* committed the offense of (manufacture of methamphetamine) (or) (possession of drug paraphernalia with the purpose to manufacture methamphetamine):

[in the presence of (a minor) (an elderly person) (an incompetent person).]

[with (a minor) (an elderly person) (an incompetent person) in the same home or building (where the methamphetamine was being manufactured) (where the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used).]

[with (a minor) (an elderly person) (an incompetent person) (present in the same immediate area) (or) (in the same vehicle) at the time of _____ *(defendant's)* arrest for the offense.

If you find _____ *(defendant)* guilty of the offense of (manufacture of methamphetamine) (possession of drug paraphernalia with the purpose to manufacture methamphetamine), you will so indicate on the verdict form provided to you. You will also make a finding about whether _____ *(defendant)* committed the offense in the presence of (a minor) (an elderly person) (an incompetent person).

If you reach a verdict of not guilty, you will indicate this on the form.

Definitions

"Elderly person" means any person seventy (70) years of age or older.

"Incompetent person" means any person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated.

"Minor" means any person under eighteen (18) years of age.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 8304 2d VF when the defendant is charged with having committed an offense under Ark Code Ann. § 5-64-401(a)(1)(i) (repealed effective July 27, 2011), § 5-64-423, or Ark Code Ann. § 5-64-403(c) (repealed effective July 27, 2011), § 5-64-443 in the presence of a minor, an elderly person, or an incompetent person.

COMMENT

Ark. Code Ann. § 5-64-407. This section contains definitions for "minor," "elderly person," and "incompetent person."

AMCI 2d 8205-EXP
STAGE ONE—CONTROLLED SUBSTANCE OFFENSE IN PROXIMITY TO CERTAIN FACILITIES

The State has alleged that _____ *(defendant)* **committed the offense of** [possessing] [delivering] [possessing with the purpose to deliver] [manufacturing] [or] [trafficking] **a controlled substance in proximity to** _____

[a city or state park]

[a public or private elementary or secondary school, public vocational school, or private or public college or university]

[a designated school bus stop]

[a skating rink, Boys Club, Girls Club, YMCA, YWCA, or community or recreation center or video arcade]

[a publicly funded and administered multifamily housing development]

[a drug or alcohol treatment facility]

[a day care center]

[a church] [or]

[a domestic abuse shelter].

To sustain this allegation the State must prove beyond a reasonable doubt that *(defendant)* (knowingly) (purposely) **committed the offense of** _____ *(insert applicable offense)* **on or within 1,000 feet of the real property of** _____ *(insert applicable location).*

If you find *(defendant)* **guilty of the offense of** _____ *(insert applicable controlled substance offense)*, **you will so indicate on the verdict form(s) provided you. You will also make a finding about whether** *(defendant) committed the offense in proximity to* _____ *(insert applicable location).* **If you reach a verdict of not guilty, you will indicate this on the form.**

Definitions

"Knowingly."—A person acts knowingly (or with knowledge) with respect to his conduct or the circumstances that exist at the time of his act when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purposely."—A person acts with purpose with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

"Recreation center" means a public place of entertainment consisting of various types of entertainment, including, without limitation to, billiards or pool, ping pong or table tennis, bowling, video games, pinball machines, or any other similar type of entertainment.

"Shelter" means any entity that: (A) Provides services including food, housing, advice, counseling, and assistance to victims of domestic abuse and their minor dependent children in this state; and (B) Meets the program, fiscal, and training requirements of the law.

NOTE ON USE

This instruction should be given in addition to the instruction for the underlying controlled substance offense.

This enhancement is to be used with a violation of § 5-64-419 (possession) only when the offense is a Class C felony or greater.

The statutory language regarding "a designated school bus stop" includes "as identified on the route list published by a public school district each year." If a jury issue is presented by this language, then the instruction should be modified.

When this instruction is used, refer to AMCI 2d 8303 VF, 9204, and 9316 VF as a model for additional verdict forms. The applicable controlled substance offense should be inserted and "in proximity to _____ [applicable location]" should be substituted for "in the presence of a child."

COMMENT

Ark. Code Ann. § 5-64-411. "Recreation center" is defined in § 5-64-411. "Shelter" is defined in § 9-4-102.

Any person who commits an offense under § 5-64-419 (possession and the offense is a Class C felony or greater) or under Ark. Code Ann. §§ 420–440 (delivering, possessing with purpose to deliver, manufacturing, or trafficking a controlled substance may be subject to an enhanced sentence of an additional term of imprisonment of ten (10) years if the offense is committed on or within one thousand (1,000) feet of the location's real property).

The enhanced portion of the sentence shall be consecutive or concurrent to any other sentence imposed. Any person convicted under this section shall not be eligible for early release on parole for the enhanced portion of the sentence.

The statute specifies a notice to be posted at the entrances to the property; however, the posting of the notice shall not be a necessary element for the enhancement of a sentence.

In *Small v. State*, 2018 Ark. App. 80, the Court of Appeals held that the location where the act is committed requires a culpable mental state, but Ark. Code Ann. § Section 5-64-411 does not proscribe one; therefore, one must be imputed pursuant to Ark. Code Ann. § 5-2-203(b), which provides, a culpable mental state is established only if a person acts purposely, knowingly, or recklessly.

AMCI 2d 8206-EXP
STAGE ONE—TARGETING LAW ENFORCEMENT OFFICER, FIRST RESPONDER, OR THEIR FAMILY

The State has alleged that _____ *(defendant)* in committing the offense of _____ targeted the victim because the victim was (currently employed) (or) (formerly employed) as a (law enforcement officer) (or) (first responder) (or) (a family member of a current or former (law enforcement officer) (or) (first responder)).

To sustain this allegation, the State must prove beyond a reasonable doubt that _____ *(defendant)* in committing the offense of _____ purposely selected the victim because the victim was (currently employed) (or) (was formerly employed) as a (law enforcement officer) (or) (first responder) (or) (a family member of a current or former (law enforcement officer) (or) (first responder)).

If you find _____ *(defendant)* guilty of the offense of _____, you will so indicate on the verdict form(s) provided you. You will also make a finding about whether _____ *(defendant)* targeted the victim because the victim was (currently employed) (or) (formerly employed) as a (law enforcement officer) (or) (first responder) (or) (a family member of a current or former (law enforcement officer) (or) (first responder)). If you reach a verdict of not guilty, you will indicate this on the form.

Definitions

"Family member of a current or former law enforcement officer or first responder" means the husband, wife, son, daughter, brother, sister, or parent of a current or former law enforcement officer or first responder.

"First responder" means a firefighter or a person employed as an emergency medical provider.

"Law enforcement officer" includes without limitation a prosecuting attorney or a deputy prosecuting attorney, code enforcement officer, and corrections officer.

"Purposely."—A person acts purposely with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 8305-VF. The instruction should be given in addition to the instruction for the underlying offense.

This instruction may be modified for use with Act 955 of 2017 (Ark. Code Ann. § 5-4-705), targeting a freight rail or public transit employee.

COMMENT

Ark. Code Ann. § 5-4-704. Definitions are found in § 5-4-701. This sentence enhancement is not applicable if an element of the underlying offense is that the

victim is a law enforcement officer or first responder. § 5-4-704(d).

AMCI 2d 8207-EXP
STAGE ONE—EXTENDED TERM OF IMPRISONMENT—TARGETING VICTIM AT CHURCH OR OTHER PLACE OF WORSHIP—SERIOUS VIOLENT FELONY

The State has alleged that _____ *(defendant)* in committing the offense of [*offense—serious felony involving violence*] is subject to an extended term of imprisonment because the victim was present on the grounds of a church or other place of worship at the time of the offense.

To sustain this allegation, the State must prove beyond a reasonable doubt that _____ *(defendant)* purposely selected the victim of _____ *(offense)* because [he] [she] [they] [was] [were] present on the grounds of or in a church or other place of worship when committing the offense.

If you find _____ *(defendant)* guilty of the offense of, you will so indicate on the verdict form(s) provided you. You will also make a finding about whether _____ *(defendant)* selected the victim because the victim was present on the grounds of or in a church or other place of worship. If you reach a verdict of not guilty, you will indicate this on the form.

Definitions

"Purposely."—A person acts purposely with respect to his conduct when it is his conscious object to engage in the conduct.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 8306-VF. The instruction should be given in addition to the instruction for the underlying offense.

COMMENT

Ark. Code Ann. § 5-4-707.

CHAPTER 83

STAGE ONE: VERDICT FORMS

SYNOPSIS

8301-VF. **Stage One: Standard Verdict Form**

8302-VF. **Stage One: Verdict Form Firearm Enhancement**

8303-VF. **Stage One: Verdict Form—Enhancement For Felony In Presence Of Child**

8304-VF. **Stage One: Verdict Form—Enhancement For Methamphetamine Offense In Presence Of Certain Persons**

8305-VF. **Stage One: Verdict Form—Enhancement For Targeting Law Enforcement Officer, First Responder, Or Their Family**

8306-VF. **Stage One: Extended Term Of Imprisonment—Targeting Victim At Church Or Other Place Of Worship—Serious Violent Felony Verdict Form**

(Text continued on page 83-3)

AMCI 2d 8301-VF

STAGE ONE: STANDARD VERDICT FORM

We, the Jury, find _____ *(defendant)* **guilty of** _____ *(offense)*.

_____

FOREMAN

We, the Jury, find _____ *(defendant)* **not guilty.**

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 8104.

If verdict forms for lesser included offenses are given, the not guilty verdict should be given on a separate form.

Where the jury has been instructed on lesser included offenses requiring the giving of a special EXP instruction and a special verdict form, AMCI 2d 8301-VF may be appropriately modified so that it may be combined with the special verdict form. *See* AMCI 2d 9502 (Illustrative Instructions: Burglary) paragraph15.

AMCI 2d 8302-VF

STAGE ONE: VERDICT FORM — FIREARM ENHANCEMENT

If you find _____ *(defendant)* guilty of_____ *(felony)* [or_____ *(list any lesser included felonies submitted to jury)*], you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ *(defendant)* employed a firearm as a means of (committing) (or) (escaping from the commission of) the _____ *(felony)* [or *(list anylesser included felonies submitted to jury)*].

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 8201-EXP-F. The form should be provided to the jury in addition to the appropriate AMCI 2d 8301-VF standard verdict form or forms for the underlying felony.

If a verdict of guilty is returned and the question is answered in the affirmative, AMCI 2d 9203 should be used in Stage Two.

COMMENT

Ark. Code Ann. § 16-90-120 provides that a defendant convicted of a felony who employs a firearm as a means of committing or escaping from the felony may be subjected to an additional period of imprisonment of up to 15 years.

In *Watson v. State*, 71 Ark. App. 52, 26 S.W.3d 588 (2000), the jury found the defendant guilty of second-degree murder and fixed his imprisonment at 20 years. The jury also found that defendant used a firearm in the commission of the felony but was not asked to fix a term of imprisonment. After the jury was dismissed, the court imposed an additional term of imprisonment of 15 years based on the use of the firearm. The Court of Appeals ruled that the jury, not the court, should have determined the extent to which the sentence should have been enhanced for the use of a firearm and reduced the sentence to 20 years. *See also, Johnson v. State*, 249 Ark. 208, 458 S.W.2d 409 (1970), holding that a defendant could not be subjected to an additional period of confinement for use of a firearm in the absence of a jury finding that a firearm had been used in the commission of a felony. Both cases also hold that the information must charge the defendant with the use of a firearm.

AMCI 2d 8303-VF

STAGE ONE: VERDICT FORM — ENHANCEMENT FOR FELONY IN PRESENCE OF CHILD

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of _____ *(felony)*.

_____

FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that *(defendant)* committed the offense of _____ *(felony)* in the presence of a child ?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 8203-EXP.

If a verdict of guilty is returned and the question is answered in the affirmative, AMCI 2d 9204 should be used in Stage Two.

COMMENT

Ark. Code Ann. § 5-4-702.

AMCI 2d 8304-VF
STAGE ONE: VERDICT FORM—ENHANCEMENT FOR METHAMPHETAMINE OFFENSE IN PRESENCE OF CERTAIN PERSONS

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine).

_____

FOREPERSON

We, the Jury, find _____ *(defendant)* not guilty.

_____

FOREPERSON

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ *(defendant)* committed the offense of (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine)

[In the presence of (a minor) (an elderly person) (an incompetent person)?

YES _____ NO_____]

[With (a minor) (an elderly person) (an incompetent person) in the same home or building where the methamphetamine was being manufactured or where the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used?

YES _____ NO_____]

[With (a minor) (an elderly person) (an incompetent person) present in the same immediate area or in the same vehicle at the time of _____ *(defendant's)* arrest for the offense?

YES _____ NO_____]

_____

FOREPERSON

NOTE ON USE

This verdict from should be used in conjunction with AMCI 2d 8204-EXP.

If a verdict of guilty is returned and a question is answered in the affirmative, AMCI 2d 9205 should be used in Stage Two.

COMMENT

Ark. Code Ann. § 5-64-407.

AMCI 2d 8305-VF
STAGE ONE: VERDICT FORM—ENHANCEMENT FOR TARGETING LAW ENFORCEMENT OFFICER, FIRST RESPONDER, OR THEIR FAMILY

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of _____ *(underlying offense).*

_____

FOREMAN

We, the Jury, find _____ *(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ *(defendant)* in committing the offense of (_____) targeted the victim because the victim was (currently employed) (or) (formerly employed) as a (law enforcement officer) (or) (first responder) (or) (a family member of a current or former (law enforcement officer) (or) (first responder))?

YES _____

NO_____

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 8206-EXP. If a verdict of guilty is returned and the question is answered in the affirmative, AMCI 2d 9209 should be used in Stage Two.

COMMENT

Ark. Code Ann. § 5-4-704.

AMCI 2d 8306-VF
STAGE ONE: EXTENDED TERM OF IMPRISONMENT—TARGETING VICTIM AT CHURCH OR OTHER PLACE OF WORSHIP—SERIOUS VIOLENT FELONY VERDICT FORM

We, the Jury, find beyond a reasonable doubt that _____ *(defendant)* is guilty of _____ *(underlying offense)*.

_____

FOREMAN

We, the Jury, find _____ *(defendant)* *(defendant)* not guilty.

_____

FOREMAN

If your verdict is guilty, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt, that _____ *(defendant)* purposely selected the victim of _____ *(offense)* because [he] [she] [they] [was] [were] present on the grounds of or in a church or other place of worship when committing the offense?

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 8207-EXP. If a verdict of guilty is returned and the question is answered in the affirmative, AMCI 2d 9211 should be used in Stage Two.

COMMENT

Ark. Code Ann. § 5-4-707.

CHAPTER 90

STAGE TWO: EVIDENCE RELEVANT TO SENTENCING

SYNOPSIS

9000. Explanatory Note — Stage Two — Evidence Relevant to sentencing

9001-INTRO. Stage Two: Additional Evidence Respecting Sentencing

AMCI 2d 9000
EXPLANATORY NOTE — STAGE TWO — EVIDENCE RELEVANT TO SENTENCING

Ark. Code Ann. §§ 16-97-103 and -104 provide:

[Section 103] Evidence relevant to sentencing by either the court or a jury may include, but is not limited to the following, provided no evidence shall be construed under this section as overriding the Rape Shield statute in Arkansas Code Annotated 16-42-101:

(1) The law applicable to parole, meritorious good time or transfer;

(2) Prior convictions of the defendant, both felony and misdemeanor—the jury may be advised as to the nature of the previous convictions, the date and place thereof, the sentence received and the date of release from confinement or supervision from all prior offenses;

(3) Prior judicial determinations of delinquency in juvenile court, subject to the following limitations:

(i) That prior delinquency adjudications be subject to a judicial determination that the relevant value of the prior juvenile adjudication outweighs its prejudicial value; and

(ii) That consideration only be given to juvenile delinquency adjudications for crimes for which the juvenile could have been tried as an adult; and

(iii) That in no event shall delinquency adjudications for acts occurring more than 10 years prior to the commission of the offense charged be considered;

(4) Victim impact evidence or statement;

(5) Relevant character evidence;

(6) Evidence of aggravating and mitigating circumstances — the criteria for departure from the sentencing standards may serve as examples of this type of evidence;

(7) Evidence relevant to guilt presented in the first stage;

(8) Evidence held inadmissible in the first stage may be resubmitted for consideration in the second stage if the basis for exclusion did not apply to sentencing;

(9) Rebuttal evidence.

[Section 104] Proof of prior convictions, both felony and misdemeanor, and proof of juvenile adjudications shall follow the procedures outlined in A.C.A. 5-4-502-504.

What weight the jury is to give evidence introduced pursuant to Ark. Code Ann. §§ 16-97-103 and -104 and how the jury is to use the evidence in arriving at a sentence are not specified, nor is it clear whether the trial court may instruct the jury in these regards, given the strictures of Ark. Const. art. 7, § 23, which forbids trial courts from "charg[ing] juries with regard to matters of fact . . .," i.e., from

commenting on the evidence. Therefore, the Committee has deferred proposing pattern instructions on subjects other than parole, transfer, and meritorious good time in favor of leaving the permissible form of these instructions to emerge from the litigation process.

AMCI 2d 9001-INTRO is provided to inform the jury why it is hearing additional evidence after returning a verdict of guilt.

If, pursuant to § 16-97-103(2)-(6), evidence of prior convictions or determinations of delinquency, victim impact evidence or statements, character evidence, or aggravating and mitigating circumstance evidence is presented, no instructions or verdict forms permitting specific findings on these determinations appear to be required.

If the defendant is charged as an habitual offender and evidence of prior convictions is to be introduced, then, for reasons set out at AMCI 2d 9200 Introductory Note, appropriate instructions from Chapters 92 and 93 should be given.

If, pursuant to § 16-97-103(1), the jury is instructed on parole, transfer, and meritorious good time, then AMCI 2d 9401, 9402, or 9403 should be given after all evidence admitted under § 16-97-103 is presented.

For example, in a commercial burglary trial resulting in a verdict of guilt, Stage Two will begin with AMCI 2d 9001-INTRO being read to the jury. This instruction will be followed by introduction of Stage-Two evidence, such as victim impact or character evidence, under § 16-97-103(2)-(6). All evidence having been introduced, the jury will be given the standard punishment instruction, AMCI 2d 9104. (If the defendant is charged as an habitual offender and does not dispute the prior convictions, then the habitual offender instruction, AMCI 2d 9202, will be given instead of 9104.) Where an instruction regarding parole or transfer has been requested, AMCI 2d 9401, 9402, or 9403 will then be given. The final Stage-Two instruction will be AMCI 2d 9111. The court, in the course of instructing the jury with AMCI 2d 9111, will read to the jury the appropriate verdict form from Chapter 93: in this example AMCI 2d 9304-VF in a non-habitual offender case. Closing arguments will then be made, followed by the court reading the final sentence of AMCI 2d 9111 and the jury's deliberation on sentence.

COMMENT

Aggravating Circumstances

In *Hill v. State,* 318 Ark. 408, 414, 887 S.W.2d 275, 278 (1994), the Arkansas Supreme Court cited with approval the following definition of "aggravation," in clarifying what are "aggravating circumstances" that can be shown under Ark. Code Ann. § 16-97-103(6) during the sentencing phase of a prosecution: "any circumstance attending the commission of a crime. . .which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime. . .itself." *Black's Law Dictionary* at 712 (6th ed. 1990).

Application of Rules of Evidence

With respect to sentencing generally, the Court in *Hill* said, "The introduction of evidence during this stage must be governed by our rules of admissibility and exclusion; otherwise, these proceedings would not pass constitutional muster. . .." *Id.* at 413, 887 S.W.2d at 278 (1994).

AMCI 2d 9001-INTRO
STAGE TWO: ADDITIONAL EVIDENCE RESPECTING SENTENCING

You have found_____(defendant) guilty of_____(offense). The law provides that, after a jury returns a verdict of guilt but before it sentences, the State and the defendant may present additional evidence to be considered by the jury in its deliberations on sentencing. In your deliberations on the sentence to be imposed, you may consider both the evidence presented in the first stage of this trial, where you rendered a verdict on guilt, and the evidence to be presented in this part of the trial. You will now hear evidence that you may consider in arriving at an appropriate sentence.

NOTE ON USE

This instruction should be given after the jury returns a verdict of guilt but before additional evidence is presented pursuant to Ark. Code Ann. § 16-97-103.

If no evidence is to be introduced in Stage Two, then this instruction should be appropriately modified or omitted.

CHAPTER 91

STAGE TWO: STANDARD PUNISHMENT INSTRUCTIONS

SYNOPSIS

9101. Stage Two: Standard Punishment Instruction—Class Y Felony

9102. Stage Two: Standard Punishment Instruction—Class A Felony

9103. Stage Two: Standard Punishment Instruction—Class B Felony

9104. Stage Two: Standard Punishment Instruction—Class C Felony

9105. Stage Two: Standard Punishment Instruction—Class D Felony

9106. Stage Two: Standard Punishment Instruction—All Unclassified Offenses

9107. Stage Two: Standard Punishment Instruction—Misdemeanors

9107.1. Stage Two: Standard Punishment Instruction—First Offense Driving or Boating While Intoxicated

9108. Stage Two: Fine—Pecuniary Gain Derived From Offense

9109. Stage Two: Jury to Reach Agreement if Possible—Deadlocked Jury

9110. Stage Two: Capital Murder—Jury to Reach Agreement if Possible—Deadlocked Jury

9111. Stage Two: Closing Instructions

9112. Stage Two: Consecutive Sentence Recommendation

(Text continued on page 91-3)

AMCI 2d 9101
STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — CLASS Y FELONY

[You have found *(defendant(s))* **guilty of** *(offense). (Offense)* **is punishable by imprisonment in the Department of Correction for not less than 10 years and not more than 40 years, or for life.]**

[You have found *(defendant(s))* **guilty of rape. Rape, when committed against a victim who is 14 years of age or younger, is punishable by imprisonment in the Department of Correction for not less than 25 years and not more than 40 years, or for life.]**

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of a Class Y felony. If the defendant is charged as an habitual offender, this instruction should not be used. AMCI 2d 9201 or 9202 should be used, depending upon whether the habitual offender allegation is disputed. If the defendant is not charged as an habitual offender but has been found guilty of an offense using a firearm or deadly weapon, AMCI 2d 9203 should be used.

Use the second bracketed alternative, when the victim of rape is 14 years of age or younger.

COMMENT

Ark. Code Ann. § 5-4-401. Ark. Code Ann. § 5-14-103(c)(2) provides for a minimum sentence of 25 years for rape of a person 14 years of age or younger.

There is no provision for the imposition of a fine for a Class Y felony.

(Text continued on page 91-5)

AMCI 2d 9102

STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — CLASS A FELONY

You have found _____ *(defendant(s))* **guilty of** _____ *(offense).* _____ *(Offense)* **is punishable by imprisonment in the Department of Correction for not less than 6 years and not more than 30 years, or by a fine not exceeding $15,000, or by both imprisonment and a fine.**

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of a Class A felony.

If the defendant is charged as an habitual offender, this instruction should not be used. AMCI 2d 9201 or 9202 should be used, depending upon whether the habitual offender allegation is disputed.

If the defendant is not charged as an habitual offender but has been found guilty of an offense using a firearm or deadly weapon, AMCI 2d 9203 should be used.

COMMENT

Ark. Code Ann. §§ 5-4-201 and -401.

AMCI 2d 9103

STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — CLASS B FELONY

You have found _____ *(defendant(s))* **guilty of** _____ *(offense).* _____ *(Offense)* **is punishable by imprisonment in the Department of Correction for not less than 5 years and not more than 20 years, or by a fine not exceeding $15,000, or both imprisonment and a fine.**

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of a Class B felony.

If the defendant is charged as an habitual offender, this instruction should not be used. AMCI 2d 9201 or 9202 should be used, depending upon whether the habitual offender allegation is disputed.

If the defendant is not charged as an habitual offender but has been found guilty of an offense using a firearm or deadly weapon, AMCI 2d 9203 should be used.

COMMENT

Ark. Code Ann. §§ 5-4-201 and -401.

AMCI 2d 9104

STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — CLASS C FELONY

You have found _____ *(defendant(s))* **guilty of** _____ *(offense).* _____ *(Offense)* **is punishable by imprisonment in the Department of Correction for not less than 3 years and not more than 10 years, or by a fine not exceeding $10,000, or both imprisonment and a fine.**

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of a Class C felony.

If the defendant is charged as an habitual offender, this instruction should not be used. AMCI 2d 9201 or 9202 should be used, depending upon whether the habitual offender allegation is disputed.

If the defendant is not charged as an habitual offender but has been found guilty of an offense using a firearm or deadly weapon, AMCI 2d 9203 should be used.

COMMENT

Ark. Code Ann. §§ 5-4-201 and -401.

AMCI 2d 9105

STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — CLASS D FELONY

You have found _____ *(defendant(s))* **guilty of** _____ *(offense).* _____ *(Offense)* **is punishable by imprisonment in the Department of Correction for not more than 6 years, or by a fine not exceeding $10,000, or both imprisonment and a fine.**

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of a Class D felony.

If the defendant is charged as an habitual offender, this instruction should not be used. AMCI 2d 9201 or 9202 should be used, depending upon whether the habitual offender allegation is disputed.

If the defendant is not charged as an habitual offender but has been found guilty of an offense using a firearm or deadly weapon, AMCI 2d 9203 should be used.

Because there is no lower limit for a Class D felony, the jury can sentence a defendant to zero imprisonment following conviction of that grade of offense. *Slaughter v. State*, 69 Ark. App. 65, 12 S.W.3d 240 (2000).

COMMENT

Ark. Code Ann. §§ 5-4-201 and -401.

AMCI 2d 9106

STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — ALL UNCLASSIFIED OFFENSES

You have found _____ *(defendant(s))* **guilty of** _____ *(offense).* _____ *(Offense)* **is punishable by imprisonment in the Department of Correction for** _____ *(applicable sentencing range)* **or by a fine** [of] [not exceeding] _____ *(applicable range of fines)*, **or by both imprisonment and a fine.**

NOTE ON USE

This instruction is to be given where the jury has found the defendant guilty of an unclassified felony.

Ark. Code Ann. §§ 5-64-401(a)(1)(i)–(iii), defining controlled substance offenses, require that imprisonment *and* a fine be imposed upon conviction: A defendant convicted of one of these offenses cannot, for example, simply be fined. This instruction must therefore be modified for use in these cases.

AMCI 2d 9107

STAGE TWO: STANDARD PUNISHMENT INSTRUCTION — MISDEMEANORS

You have found _____ *(defendant(s))* **guilty of** _____ *(offense).* _____ *(Offense)* **is punishable by imprisonment in the county jail for not more than** _____ *(maximum punishment)*, **or by a fine not exceeding** _____ *(maximum fine)*, **or by both imprisonment and a fine.**

NOTE ON USE

This instruction is to be used where the jury has found the defendant guilty of a misdemeanor. *See* Ark. Code Ann. §§ 5-4-201 and -401 for the sentencing parameters.

AMCI 2d 9107.1
STAGE TWO: STANDARD PUNISHMENT INSTRUCTION—FIRST OFFENSE DRIVING OR BOATING WHILE INTOXICATED

You have found _____ **(Defendant) guilty of** (driving) (or) (boating) **while intoxicated** [and have further found that _____ *(defendant)* committed the offense with a passenger under sixteen years of age in the (vehicle) (or) (motorboat)]. (Driving) (or) (Boating) **while intoxicated is punishable by imprisonment in the county jail for not less than** [24 hours nor more than one year] [seven days nor more than one year] **and by a fine of not less than $150 nor more than $1,000.**

NOTE ON USE

This instruction is to be used in conjunction with AMCI 2d 9307.1-VF where the jury has found the defendant guilty of first offense DWI/BWI. *See* Ark. Code Ann. §§ 5-65-104, -111, and -112.

When the jury has determined in Stage One that the defendant committed the offense of driving or boating while intoxicated with a passenger under the age of sixteen years in the vehicle or motorboat, use the applicable bracketed language. The second set of brackets describing the sentence range should be used.

COMMENT

The terms of imprisonment are found at Ark. Code Ann. § 5-65-111(a). The fine provisions are included in § 5-65-112.

AMCI 2d 9108
STAGE TWO: FINE—PECUNIARY GAIN DERIVED FROM OFFENSE

If you find that_____(defendant(s)) derived pecuniary gain from commission of the offense, the maximum fine may be increased by an amount not exceeding double the amount of the pecuniary gain.

Pecuniary gain means the amount of money or the value of property derived from the commission of the offense [less the amount of money or the value of property returned to the victim of the crime] [or] [seized or surrendered to lawful authority prior to the time sentence is imposed].

NOTE ON USE

This instruction should be given immediately following the basic punishment instruction, when appropriate. Paragraphs (B) and (C) on the verdict form should be modified appropriately if "double the amount of pecuniary gain" exceeds the maximum fine otherwise allowable under the statute.

COMMENT

Ark. Code Ann. § 5-4-201(d).

AMCI 2d 9109
STAGE TWO: JURY TO REACH AGREEMENT IF POSSIBLE—DEADLOCKED JURY

It is in the interest of the State of Arkansas and of the defendant(s) for you to reach an agreement in this case, if at all possible.

Under your oath as jurors, you have obligated yourselves to render verdicts in accordance with the law and the evidence. In your deliberations you should weigh and discuss the evidence and make every reasonable effort to harmonize your individual views on the merits of the case. Each of you should give due consideration to the views and opinions of other jurors who disagree with your views and opinions. No juror should surrender his sincere beliefs in order to reach a verdict; to the contrary, the verdict should be the result of each juror's free and voluntary opinion. By what I have said as to the importance of the jury reaching a verdict, I do not intend to suggest or require that you surrender your conscientious conviction, only that each of you make every sincere effort to reach a proper verdict. Therefore, I request the jury to retire for further deliberation for a reasonable time in an attempt to reach a verdict.

NOTE ON USE

This instruction should not be given until the jury, after prolonged deliberation, has not reached a verdict. The trial judge may wish to give this type of instruction in his own words. The above is submitted as a guide to avoid errors sometimes made.

Do not use this instruction in the punishment phase of a capital murder trial because if the jury does not unanimously agree on the death sentence a verdict of life will automatically stand without a retrial. *Fretwell v. State,* 289 Ark. 91, 708 S.W.2d 630 (1986).

COMMENT

Under Ark. Code Ann. § 5-4-103(b)(3), the court decides punishment if the jury fails to agree on a sentence. The court should not suggest to the jury in this instruction that the case will have to be retried if the jury fails to reach a verdict. This instruction, therefore, differs from AMCI 2d 8102, which is given when the jury is deadlocked in stage one.

It is proper for the trial court to warn the jury to lay aside pride of opinion and consult with each other for the purpose of harmonizing their views, if possible, and that it is their duty to apply the law as given by the court to the facts and deal with each other in a spirit of candor in order to arrive at a verdict, so long as the court does not comment on the evidence and makes it clear that no juror should surrender his sincere beliefs in order to reach a verdict. *Evans v. State,* 252 Ark. 335, 478 S.W.2d 874 (1972); *Hardin v. State,* 225 Ark. 602, 284 S.W.2d 111 (1955); *Benson v. State,* 149 Ark. 633, 233 S.W. 758 (1921).

AMCI 2d 9110
STAGE TWO: CAPITAL MURDER—JURY TO REACH AGREEMENT IF POSSIBLE—DEADLOCKED JURY

Ladies and Gentlemen, when you enter the jury room it is your duty to consult with one another to consider each other's views and to discuss the evidence with the objective of reaching a just verdict if you can do so without violence to your individual judgment.

Each of you must decide the case for yourself but only after discussion and impartial consideration of the case with your fellow jurors. You are not advocates for one side or the other. Do not hesitate to reexamine your own views and to change your opinion if you are convinced you are wrong but do not surrender your honest belief as to the weight and effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

If the jury is unable to agree unanimously on a recommendation, the court shall impose the sentence of life imprisonment without parole.

NOTE ON USE

This instruction should not be given until the jury, after prolonged deliberation on sentencing, has not reached a verdict or the jury has announced that it is deadlocked. This instruction should be given without modification.

COMMENT

If, in stage two of a death penalty trial, the jury cannot unanimously agree upon the imposition of a death penalty, the trial court must sentence the defendant to a term of life imprisonment without parole. Ark. Code Ann. § 5-4-603(c) (1987). The statutory procedure for the penalty phase does not address whether the trial judge should instruct a deadlocked jury to continue deliberations on the imposition of the death penalty. The question whether the trial court must impose a sentence of life imprisonment without parole if the jury's initial vote is not unanimous has not been answered. *Fretwell v. State,* 289 Ark. 91, 708 S.W.2d 630 (1986). However, the Court in *Fretwell* stated that what was formerly AMCI 6004, now AMCI 2d 8102, is not applicable because the instruction refers to a new trial with a different jury when, in fact, no new trial will occur. *Fretwell v. State,* 289 Ark. 91, 708 S.W.2d 630 (1986).

Although the Arkansas Supreme Court has not ruled on the issue, the U.S. Supreme Court has held that use of a modified *Allen* charge during the penalty phase of a capital murder trial does not violate any constitutional provisions. *Lowenfield v. Phelps,* 484 U.S. 231, 237–241, 108 S. Ct. 546, 550–552 (1988); *see also Allen v. United States,* 164 U.S. 492 (1896). The instruction set out here is the same one used in Lowenfield except that it excludes the reference to probation and suspension of sentence. *Lowenfield v. Phelps,* 484 U.S. 231, 235, 108 S. Ct. 546, 549, 98 L. Ed. 2d 568 (1988).

AMCI 2d 9111
STAGE TWO: CLOSING INSTRUCTION

After hearing arguments of counsel, you will again retire to consider and complete [one of] **the following verdict form(s):**

(Here the appropriate verdict form(s) will be read to the jury.)

_____ *(Defendant)* may also contend that he should receive [an alternative sentence] [the alternative sentence of _____]. You may recommend that he receive [an] [this] alternative sentence, but you are advised that your recommendation will not be binding on the court.

If you recommend [an] [the] alternative sentence you shall so indicate on the form reading as follows:

(Here the alternative verdict form is to be read to the jury.)

Even if you do recommend [an] [the] alternative sentence, however, you must still complete [one of] the other verdict forms.

All 12 of you must agree on the verdict, but only the foreman need sign the verdict.

(Here the closing arguments for Stage Two will be made.)

The jury will now retire to the jury room to deliberate.

NOTE ON USE

The verdict forms should be read to the jury in each case.

The plural option and the bracketed portion of the first sentence should be used when the status of the defendant as a habitual criminal is disputed. *See* AMCI 2d 9311-VF, 9314-VF, and 9315-VF.

The bracketed reference to alternative sentences may be given where the court, pursuant to discretion conferred by Ark. Code Ann. § 16-97-101(4), permits defense counsel to argue to the jury that it should recommend an alternative sentence for which the defendant qualifies, presumably under Ark. Code Ann. §§ 16-93-1201 *et seq.,* the Community Punishment Act.

There being many different kinds of alternative sentences, no AMCI 2d alternative sentence verdict forms have been provided herein. Appropriate alternative verdict forms and instructions describing the alternative sentences at issue should be prepared by defense counsel.

Ark. Code Ann. § 16-97-101(4) provides that a jury's "recommendation [with respect to an alternative sentence] shall not be binding on the court." Two possible procedures that might be followed by a court permitting a jury to consider alternative sentencing are set out below.

First, if the trial court permits the jury to consider alternative sentencing in addition to the ordinary sentencing options, and the jury returns an alternative

sentence, the court may, prior to discharging the jury, decide if it will accept the alternative sentence. If the court accepts the alternative sentence, then the jury may be discharged. If the court exercises its discretion not to accept the alternative sentence, it should instruct the jury to resume its sentencing deliberations.

A second way of proceeding is for the court to require that the jury complete two forms, one imposing an alternative sentence and the other imposing an ordinary sentence of imprisonment, a fine, or both. If the court declines to follow the alternative sentence recommendation of the jury, there will be a basis, *viz.*, the other completed verdict form, for a sentence.

AMCI 2d 9111, as now framed, adopts the latter approach. A court wishing to adopt the first approach should delete the last paragraph of the bracketed material.

COMMENT

The use of this instruction was approved in *Hill v. State,* 318 Ark. 408, 887 S.W.2d 275 (1994).

Based upon the discretion granted to the trial court in deciding whether to instruct on alternative sentencing, the nonbinding character of any such recommendation, and the trial judge's stated intent not to impose a suspended sentence even if it had been recommended, the trial court did not abuse its discretion when it refused to instruct the jury to consider a suspended sentence as an alternative sentence. *Bell v. State*, 2014 Ark. App. 458.

Where the jury recommended and the court accepted a sentence that was much greater than the minimum punishment, it was not error for the circuit judge to have refused to give the alternative sentencing instruction on probation, which would have been rejected. *Steele v. State*, 2014 Ark. App. 257, 434 S.W.3d 424.

The circuit court, which explicitly considered appellant's criminal history and determined that an alternative sentence of probation would not be appropriate, did not abuse its discretion. *Wells v. State*, 2017 Ark. App. 174.

Arkansas Code Annotated § 16-97-101(4), which permits courts to instruct the jury on alternative sentences, is permissive and not required. The decision to allow the instruction will be reviewed for an abuse of discretion. The abuse of discretion standard of review is a high threshold, requiring that a trial court not act improvidently, thoughtlessly, or without due consideration. The appellate court has warned that mechanical imposition of the jury's recommended sentences or an unwavering court policy refusing to instruct the jury on alternative sentences with respect to certain offenses is not an exercise of discretion. *Squyres v. State*, 2015 Ark. App. 665. Although Arkansas Code Annotated § 16-97-101(4) authorizes a trial court to instruct the jury on alternative sentences for which the defendant may qualify, nothing in the statute requires that the trial court inform the jury that mandatory registration as a sex offender will be a consequence of the conviction for certain crimes. *Id.*

Arkansas Code Annotated § 16-97-101(4) provides that the trial court, in its discretion, may instruct the jury that counsel may argue as to alternative sentences

for which the defendant may qualify. *Hayes v. State*, 2018 Ark. App. 158. The jury, in its discretion, then may make a recommendation as to an alternative sentence. This recommendation, however, shall not be binding on the court. The statutory language specifically articulates that the trial court has discretion as to the giving of the instruction. In appellant's case, the trial court considered the evidence, which included appellant admitting to slitting the victim's throat with a serrated knife, and concluded that the alternative-sentence jury instruction was not proper. The trial court did not abuse its discretion when it refused to give the instruction. *Id.*

Giving alternative-sentencing instructions is discretionary, but courts must exercise that discretion on a case-by-case basis. *Mondy v. State*, 2019 Ark. App. 290. Here, the circuit court did not apply a blanket rule when it denied appellant's request for an alternative-sentencing instruction but instead considered several things such as: (1) the fact that appellant had been charged with multiple counts; and (2) the fact that appellant had now been convicted of three counts of sexual assault against very young children. Additionally, appellant could not demonstrate prejudice from the court's denial of his request for an alternative-sentencing instruction because the jury imposed a sentence more severe than the minimum sentencing option presented to it, indicating that it would not have imposed an alternative sentence had it been provided that option. *Id.*

AMCI 2d 9112-EXP
STAGE TWO: CONSECUTIVE SENTENCE RECOMMENDATION

You have convicted _____ *(defendant)* of more than one offense, and you may sentence _____ *(defendant)* to a term of imprisonment on each offense. If you sentence _____ *(defendant)* to more than one term of imprisonment, you may also make a recommendation that any two or more terms of imprisonment be consecutive. A sentence to consecutive terms of imprisonment means that the terms of imprisonment will be added together to determine the total term of imprisonment.

You are advised that a recommendation by you that terms of imprisonment be consecutive will not be binding on the court.

NOTE ON USE

When the defendant has been convicted of multiple offenses, this verdict form should be used in conjunction with AMCI 2d 9318 and the appropriate Stage Two standard verdict forms. This instruction should be used only when defendant has been convicted of multiple felonies each punishable by imprisonment. Do not use when defendant has been convicted of a felony and a misdemeanor since a sentence to imprisonment for a felony and a sentence to imprisonment for a misdemeanor run concurrently. Ark. Code Ann. § 5-4-403(c)(1).

COMMENT

Ark. Code Ann. § 5-4-403 allows the jury to make a nonbinding recommendation that multiple terms of imprisonment be consecutive.

The trial court did not abuse its discretion when it refused to instruct the jury on the law related to the nonbinding recommendations for consecutive sentences found in AMCI 2d 9112. The trial court determined that that the instruction would "not serve any purpose" and would confuse the jurors. *Finfrock v. State*, 2017 Ark. App. 90.

CHAPTER 92

STAGE TWO: HABITUAL OFFENDER AND FIREARM ENHANCEMENT PUNISHMENT INSTRUCTIONS

SYNOPSIS

9201. Stage Two: Special Enhancement Provision

9201.1. [Obsolete]

9201.2. [Obsolete]

9201.3. Stage Two: Controlled Substances Offenders—Extended Term of Imprisonment—Habitual Offender

9201.3-A. Stage Two: Controlled Substance Offenders—Extended Term of Imprisonment—Habitual Offender [Act 570]

9201.4. Stage Two: Driving or Boating While Intoxicated—Extended Term of Imprisonment—Habitual Offender—Status Disputed

9202. Stage Two: Extended Term Of Imprisonment—Habitual Offender—Ordinary

9202.1. Stage Two: Extended Term Of Imprisonment—Habitual Offender—Previous Serious Violent Felony Conviction

9202.2. Stage Two: Extended Term Of Imprisonment—Habitual Offender—Previous Violent Felony Conviction

9203. Stage Two: Extended Term Of Imprisonment—Firearm

9204. Stage Two: Extended Term Of Imprisonment—Felony In Presence Of A Child

9205. Stage Two: Extended Term Of Imprisonment—Methamphetamine Offense In Presence Of Certain Persons

9206. Stage Two—Enhanced Felony—Domestic Battering

9206.1. Stage Two—Enhanced Felony—Domestic Battering

9207. Stage Two—Terrorism—Enhancement For Injury To Certain Persons

9208. Stage Two—Enhanced Felony—Aggravated Cruelty To Dog, Cat, Or Horse—Previous Conviction Of Aggravated Cruelty

9209. Stage Two—Extended Term Of Imprisonment—Targeting Law Enforcement Officer, First Responder, Or Their Family

9210. Stage Two—Enhanced Felony—Criminal Trespass

9211. Stage Two: Extended Term Of Imprisonment—Targeting Victim At Church Or

Other Place Of Worship—Serious Violent Felony

(Text continued on page 92-3)

AMCI 2d 9201
STAGE TWO: SPECIAL ENHANCEMENT PROVISION

In rare cases, Ark. Code Ann. § 16-90-202, providing for enhanced punishment of defendants previously convicted of multiple murders, rapes, etc., may come into play. The occasions for using this provision arise so infrequently that no instruction has been drafted.

AMCI 2d 9201.3
STAGE TWO: CONTROLLED SUBSTANCE OFFENDERS—EXTENDED TERM OF IMPRISONMENT—HABITUAL OFFENDER

You have found _____ (defendant) guilty of _____ *(offense)* [and of being in possession of a (firearm) (deadly weapon) during the commission of that offense]. **The State has also alleged that _____ (defendant) is subject to an extended term of imprisonment because he has previously been convicted of controlled substance offenses.** [The State has the burden of proving beyond a reasonable doubt that _____ *(defendant)* has at least one prior conviction of a controlled substance offense.] [It is my duty to instruct you that _____ *(defendant)* has_____ *(number)* prior conviction(s) of (a) controlled substance offense(s).]

The offense of _____ (offense), when committed by a person who has previously been convicted of one or more offenses relating to controlled substances, is punishable as follows:

(1)
Where instant offense involves narcotic drugs in Schedules I or II, or methamphetamine

(A)
400 grams and more

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 80 years, or for life, or by a fine not exceeding $500,000, or by both imprisonment and a fine.**

(B)
200 grams to 399 grams

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 20 years nor more than 80 years, or for life, or by a fine not exceeding $200,000, or by both imprisonment and a fine.**

(C)
28 grams to 199 grams

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 15 years nor more than 80 years, or for life, or by a fine not exceeding $100,000, or by both imprisonment and a fine.**

(D)
Less than 28 grams

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life, or by a fine not exceeding $50,000, or by both imprisonment and a fine.**

(2)
Where instant offense involves counterfeit substances purporting to be narcotic drugs in Schedules I or II

[Creating] [Delivering] [or] [Possessing with intent to deliver] **a counterfeit substance is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(3)
Where instant offense involves non-narcotic controlled substances, other than methamphetamine, in Schedules I, II, or III

(A)
400 grams or more

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 15 years nor more than 80 years, or for life, or by a fine not exceeding $200,000, or by both imprisonment and a fine.**

(B)
28 grams to 399 grams

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life, or by a fine not exceeding $100,000, or by both imprisonment and a fine.**

(C)
Less than 28 grams

[Manufacturing] [Delivering] [or) [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(4)
Where the instant case involves counterfeit substances purporting to be non-narcotic controlled substances, other than methamphetamine, in Schedules I, II, or III

[Creating] [Delivering] [or] [Possessing with intent to deliver] **a counterfeit substance is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(5)
Where the instant case involves controlled substances in Schedules IV or V

(A)
400 grams or more

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 15 years nor more than 80 years, or for life, or by a fine not exceeding $200,000, or by both imprisonment and a fine.**

(B)
200 grams to 399 grams

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life, or by a fine not exceeding $100,000, or by both imprisonment and a fine.**

(C)
Less than 200 grams

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(6)
Where the instant case involves counterfeit substances in Schedules IV or V

[Creating] [Delivering] [or] [Possessing with intent to Deliver] **a counterfeit substance is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(7)
Where the instant case involves controlled substances in Schedule VI

(A)
500 pounds or more

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ (*controlled substance*) **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years or by a fine not less than $15,000 nor exceeding $500,000, or by both imprisonment and a fine.**

(B)
100 pounds or more but less than 500 pounds

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 6 years nor more than 60 years, or by a fine not less than $15,000 nor exceeding $200,000, or by both imprisonment and a fine.**

(C)
10 pounds or more but less than 100 pounds

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not less than $15,000 nor exceeding $100,000, or by both imprisonment and a fine.**

(D)
Less than 10 pounds

[Manufacturing] [Delivering] [or] [Possessing with intent to manufacture or deliver] _____ *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 4 years nor more than 20 years, or by a fine not exceeding $50,000, or by both imprisonment and a fine.**

(8)
Where the instant case involves counterfeit substances purporting to be non-scheduled controlled substances

[Creating] [Delivering] [or] [Possessing with intent to deliver] **a counterfeit substance is punishable by imprisonment in the Department of Correction for not more than 12 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

[If you find that the State has failed to prove that _____ *(defendant)* has at least one prior conviction of a controlled substance offense,

then the maximum term of imprisonment would be _____ *(number)* years, (and) the maximum fine would be $_____ *(amount)* (, and you shall impose both a term of imprisonment and fine).]

NOTE ON USE

Use this instruction in conjunction with AMCI 2d 9306-VF.

If the existence of a prior conviction is disputed, use the first bracketed alternative sentence in the introductory paragraph and the bracketed sentence at the end of the instruction. In that event, the numbers to be inserted in the final sentence will be one-half of the maximum set out in the body of the instruction, with the requirement of both imprisonment and a fine to be used for a Schedule I-V offender. If the existence of one or more prior convictions is not disputed, use the second bracketed sentence in the introductory paragraph and do not use the bracketed sentence at the end of the instruction.

These extended terms are not applicable to offenses prosecuted under Ark. Code Ann. § 5-64-401(c) (repealed effective July 27, 2011), § 5-64-419 or § 5-64-441.

If the defendant has been convicted under Ark. Code Ann. § 5-74-106 of being in possession of a firearm or deadly weapon while committing a felony drug offense, this instruction should be appropriately modified. *See* AMCI 2d 6400, Introductory Note.

Ark. Code Ann. § 5-4-505, the firearm enhancement statute, was repealed, effective January 1, 1994, by 1993 Ark. Acts 550, § 9. The firearm reference in AMCI 2d 9201.3 should not be given in cases including offenses alleged to have been committed after January 1, 1994.

The punishment instruction should reflect a minimum sentence of 10 years' imprisonment in every case where the defendant has been convicted of delivering a controlled substance included in Schedule I (Ark. Code Ann. § 5-64-701) or of delivering a controlled substance in Schedules I through VI to a person in grades 1 through 12 or anyone under 18 years of age (Ark. Code Ann. § 5-64-701).

Where a defendant is convicted of distribution to a minor under Ark. Code Ann. § 5-64-406, he is exposed to twice the punishment otherwise authorized by Ark. Code Ann. § 5-64-401. If this defendant is also an habitual offender, Ark. Code Ann. § 5-64-408 apparently authorizes doubling the already doubled permissible maximum sentence, so the habitual offender's maximum exposure is four times that specified by Ark. Code Ann. § 5-64-401.

While Ark. Code Ann. § 5-64-401 provides for imprisonment *and* fines for persons convicted of manufacturing, delivering, or possessing with intent to manufacture or deliver Schedule I-V controlled substances, Ark. Code Ann. § 5-64-408 provides enhanced terms of imprisonment *and/or* enhanced fines for repeat offenders. Hence, the increased maximums for the latter category are alternative, whereas a first offender under Schedule I-V will receive both a term of imprisonment and a fine.

COMMENT

Ark. Code Ann. §§ 5-64-401 and -408. The latter section prescribes that the maximum permissible sentence be doubled for repeat offenders.

See Russell v. State, 295 Ark. 619, 751 S.W.2d 334 (1988) (Defendant with four prior felony drug convictions and four prior felony convictions for non-drug offenses may, upon conviction of another felony drug offense, be sentenced to enhanced term under Ark. Code Ann. § 5-4-501, the general habitual offender provision. The prosecution is not required to seek enhancement under Ark. Code Ann. § 5-64-408, the special drug habitual offender provision).

AMCI 2d 9201.3-A
STAGE TWO: CONTROLLED SUBSTANCE OFFENDERS—EXTENDED TERM OF IMPRISONMENT—HABITUAL OFFENDER

[Act 570]

You have found *[ ] (defendant)* guilty of [ ] *(offense).* **The State has also alleged that** *[ ] (defendant)* **is subject to an extended term of imprisonment because he has previously been convicted of controlled substance offenses.** [The State has the burden of proving beyond a reasonable doubt that [ ] *(defendant)* has at least one prior conviction of a controlled substance offense.] [It is my duty to instruct you that [ ] *(defendant)* has [ ] *(number)* prior conviction(s) of (a) controlled substance offense(s).]

The offense of *[ ] (offense),* **when committed by a person who has previously been convicted of one or more offenses relating to controlled substances, is punishable as follows:**

(1)

Where instant offense involves methamphetamine or cocaine

(A)

200 grams or more

Trafficking [ ] (*controlled substance*) **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life** [and a fine].

(B)

10 grams or more but less than 200 grams

[Possessing with purpose to deliver cocaine is punishable by imprisonment in the Department of Correction for not less than 6 years nor more than 60 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.]

[[Manufacturing] [Delivering] cocaine is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life (and a fine).]

(C)

2 grams or more but less than 10 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] **cocaine is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(D)

Less than 2 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] **cocaine is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(E)

10 grams or more but less than 200 grams

[Possessing with purpose to deliver methamphetamine is punishable by imprisonment in the Department of Correction for not less than 6 years nor more than 60 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.]

[[Manufacturing] [Delivering] methamphetamine is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life (and a fine).]

(F)

2 grams or more but less than 10 grams

[Delivering] [or] [Possessing with purpose to deliver] **methamphetamine is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(G)

Less than 2 grams

[Delivering] [or] [Possessing with purpose to deliver] **methamphetamine is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(H)

2 grams or more

Manufacturing methamphetamine is punishable by imprisonment in the Department of Correction for not less than [10 years nor more than 80 years, or for life (and a fine)] [*6 years nor more than 60 years*, or by a fine not exceeding $30,000, or by both imprisonment and a fine].

[*personal use defense]

(I)

Less than 2 grams

Manufacturing methamphetamine is punishable by imprisonment in the

Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.

(2)

Where instant offense involves controlled substances in Schedules I or II, not methamphetamine or cocaine

(A)

200 grams or more

Trafficking [ ] (*controlled substance*) **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life** [and a fine].

(B)

28 grams or more but less than 200 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 6 years nor more than 60 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(C)

2 grams or more but less than 28 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(D)

Less than 2 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(E)

[If the substance is hydromorphone hydrochloride, LSD, a depressant, hallucinogenic, or stimulant Schedule I and II substance, these provisions will need to be modified. Consult the Table in AMCI 2d 64.425-Table]

Generally, change amounts in:

B to [at least 160 dosage units but less than 200 grams]
[or] [160 dosage units or more];

C to at least 80 dosage units but less than 160 dosage units

D [blank]

But other terminology edits may be necessary.

(3)

Where instant offense involves counterfeit substances purporting to be Controlled Substances in Schedules I or II

[Delivering] [or] [Manufacturing] **a counterfeit substance is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(4)

Where instant offense involves controlled substances in Schedule III

(A)

400 grams or more

Trafficking [ ] (*controlled substance*) **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life** [and a fine].

(B)

200 grams or more but less than 400 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 6 years nor more than 60 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(C)

28 grams or more but less than 200 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(D)

Less than 28 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(E)

[For possession with purpose to deliver a depressant, hallucinogenic, or stimulant Schedule III substance]

Change amounts in: B 160 dosage units or more

C to at least 80 dosage units but less than 160 dosage units
D to less than 80 dosage units

(5)

Where instant offense involves counterfeit substances purporting to be controlled substances in Schedule III

[Delivering] [or] [Manufacturing] **a counterfeit substance is punishable by imprisonment in the Department of Correction for not more than 12 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(6)

Where instant offense involves controlled substances in Schedules IV or V

(A)

800 grams or more

Trafficking [ ] (*controlled substance*) **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life** [and a fine].

(B)

400 grams or more but less than 800 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(C)

200 grams or more but less than 400 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(D)

Less than 200 grams

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not more than 12 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(E)

[For possession with purpose to deliver a depressant, hallucinogenic, or stimulant Schedule IV or V substance]

Change amounts in: B to at least 160 dosage units but less than 800 grams;

C to at least 80 dosage units but less than 160 dosage units
D to less than 80 dosage units

(7)

Where instant offense involves counterfeit substances purporting to be Controlled Substances in Schedules IV, V, or non-scheduled substances

[Delivering] [or] [Manufacturing] **a counterfeit substance is punishable by imprisonment in the county jail for not more than 2 years, or by a fine not exceeding $5,000, or by both imprisonment and a fine.**

(8)

Where instant offense involves controlled substances in Schedule VI

(A)

500 pounds or more

Trafficking [ ] (*controlled substance*) **is punishable by imprisonment in the Department of Correction for not less than 10 years nor more than 80 years, or for life** [and a fine].

(B)

100 pounds or more but less than 500 pounds

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 6 years nor more than 60 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(C)

25 pounds or more but less than 100 pounds

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 5 years nor more than 40 years, or by a fine not exceeding $30,000, or by both imprisonment and a fine.**

(D)

4 ounces or more but less than 25 pounds

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the Department of Correction for not less than 3 years nor more than 20 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(E)

More than 14 grams but less than 4 ounces

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ]

(controlled substance) **is punishable by imprisonment in the Department of Correction for not more than 12 years, or by a fine not exceeding $20,000, or by both imprisonment and a fine.**

(F)

14 grams or less

[Manufacturing] [Delivering] [or] [Possessing with purpose to deliver] [ ] *(controlled substance)* **is punishable by imprisonment in the county jail for not more than 2 years, or by a fine not exceeding $5,000, or by both imprisonment and a fine.**

[If you find that the State has failed to prove that [ ] *(defendant)* has at least one prior conviction of a controlled substance offense, then the maximum term of imprisonment would be [ ] *(number)* years, (and) the maximum fine would be $[ ] *(amount).*]

NOTE ON USE

This instruction is to be used for offenses governed by Act 570 of 2011, which was effective July 27, 2011.

Use only those portions of the instruction applicable to the offense being tried.

Paragraphs 7 and 8 (F) have been written to conform with Act 570 of 2011, doubling the period of imprisonment and fine for a misdemeanor from one year and $2,500 to two years and $5,000. The committee had questions as to the propriety of such enhancements, and counsel confronted with this situation may want to consider the issue further.

If the existence of a prior conviction is disputed, use the first bracketed alternative sentence in the introductory paragraph and the bracketed sentence at the end of the instruction. In that event, the numbers to be inserted in the final sentence will be one-half of the maximum set out in the body of the instruction. If the existence of one or more prior convictions is not disputed, use the second bracketed sentence in the introductory paragraph and do not use the bracketed sentence at the end of the instruction.

These extended terms are not applicable to offenses prosecuted under Ark. Code Ann. § 5-64-419 (possession of controlled substance) or § 5-64-441 (possession of counterfeit substance).

If the defendant is charged under Ark. Code Ann. § 5-64-106 of being in simultaneous possession of a firearm or deadly weapon while committing a felony drug offense, this instruction should be appropriately modified. *See* AMCI 2d 6420.

Where a defendant is convicted of delivery to a minor under Ark. Code Ann. § 5-64-406, he is exposed to twice the punishment otherwise authorized. If this defendant is also an habitual offender, Ark. Code Ann. § 5-64-408 apparently authorizes doubling the already doubled permissible maximum sentence, so the

habitual offender's maximum exposure is four times that specified. Under Ark. Code Ann. § 5-64-406(c), if elements for doubling of punishment are not found, defendant may be subject to an additional 10 years of imprisonment.

Ark. Code Ann. § 5-64-408 provides enhanced terms of imprisonment *and/or* enhanced fines for repeat offenders.

COMMENT

Ark. Code Ann. §§ 420, 422, 423, 424, 426, 427, 428, 430, 431, 432, 434, 435, 436, 438, 439, 440, and 442.

Ark. Code Ann. § 5-64-408 prescribes that the maximum permissible sentence be doubled for repeat offenders.

See Russell v. State, 295 Ark. 619, 751 S.W.2d 334 (1988) (Defendant with four prior felony drug convictions and four prior felony convictions for non-drug offenses may, upon conviction of another felony drug offense, be sentenced to enhanced term under Ark. Code Ann. § 5-4-501, the general habitual offender provision. The prosecution is not required to seek enhancement under Ark. Code Ann. § 5-64-408, the special drug habitual offender provision).

AMCI 2d 9201.4
STAGE TWO: DRIVING OR BOATING WHILE INTOXICATED—EXTENDED TERM OF IMPRISONMENT—HABITUAL OFFENDER—STATUS DISPUTED

You have found _____ *(defendant)* **guilty of** (driving) (or) (boating) **while intoxicated** [and you have further found that _____ *(defendant)* committed the offense with a passenger under sixteen years of age in the (vehicle) (or) (motorboat)].

The [State] [City] **has also alleged that** _____ *(defendant)* **is subject to enhanced penalties for multiple convictions of driving (or boating) while intoxicated** [or felony negligent homicide while intoxicated].

A person is subject to enhanced penalties if he has been previously convicted of driving [or boating] **while intoxicated [or felony negligent homicide while intoxicated] at least one other time. Here the** [State] [City] **alleges that** _____ (defendant) **has been convicted of driving** (or boating) **while intoxicated** [or felony negligent homicide while intoxicated] _____ (number) **other times**. The [State] [City] **has the burden of proving** [this] [these] other conviction[s] **beyond a reasonable doubt.**

[If you find that the [State] has proved [five (or more)] prior convictions for driving (or boating) while intoxicated [or felony negligent homicide while intoxicated] within ten years of this offense, you shall sentence him to a term of not less than 5 years nor more than 20 years imprisonment in the Arkansas Department of Correction, or fine him in an amount not to exceed $15,000.00, or both.]

[If you find that the [State] has proved [four (or more)] prior convictions for driving (or boating) while intoxicated [or felony negligent homicide while intoxicated] within five years of this offense, you shall sentence him to a term of not less than [two nor more than ten years imprisonment in the Arkansas Department of Correction] [three nor more than ten years imprisonment in the Arkansas Department of Correction], and fine him in an amount not less than $900 nor more than $5,000.]

[If you find that the [State] has proved at least three prior convictions for driving (or boating) while intoxicated [or felony negligent homicide while intoxicated] within five years of this offense, you shall sentence him to a term of not less than [one nor more than six years imprisonment in the Arkansas Department of Correction] [two nor more than six years imprisonment in the Arkansas Department of Correction], and fine him in an amount not less than $900 nor more than $5,000.]

[If you find that the [State] [City] has proved at least two prior convictions for driving (or boating) while intoxicated [or felony negligent homicide while intoxicated] within five years of this offense, you shall sentence him to a term of not less than [ninety (90) days nor more than one year in the county jail] [one hundred twenty (120) days nor more than one year in the county jail], and fine him

in an amount not less than $900 nor more than $5,000.]

[If you find that the [State] [City] has proved at least one prior conviction for driving (or boating) while intoxicated [or felony negligent homicide while intoxicated] within five years of this offense, you shall sentence him to a term of not less than [seven (7) days nor more than one year in the county jail] [thirty (30) days nor more than one year in the county jail], and fine him in an amount not less than $400 nor more than $3,000.]

[If you do not find that the [State] [City] proved any prior offenses, you shall sentence the defendant to a term of not less than [24 hours nor more than one year in the county jail] [seven days nor more than one year in the county jail] and to a fine of not less than $150 nor more than $1,000.]

The verdict forms to be provided to you will set forth the alternative ranges of punishment.

NOTE ON USE

Use this instruction in conjunction with AMCI 9315-VF.

The second set of brackets in the first paragraph is used when the defendant is subject to the enhanced punishment for committing the offense with a child passenger. In each of the optional paragraphs setting out the range of punishment, two sets of brackets appear. The second set of brackets sets out the harsher range of punishment as a result of enhancement for committing the offense with a child passenger in the vehicle.

The first bracketed paragraph is based on Ark. Code Ann. § 5-65-111(f)(1), which provides if the defendant has five or more prior convictions within 10 years of a prior offense, a sixth or subsequent conviction is a Class B felony. It appears that the state has the option to prosecute under § 5-65-111(e)(1) (4 or more priors) or (f)(1) (5 or more priors) if the evidence supports both offenses.

The date of the commission of the prior offenses must be within the three year time frame for purposes of enhancement. *Rogers v. State*, 293 Ark. 414, 738 S.W. 2d 412 (1987) (In 1999, Ark. Code Ann. § 5-65-111 was amended to expand the time frame to five years). The statute requires a determination of the date of the first offense; from that date, count forward five years and determine how many DWI offenses have occurred within the five-year period as of the sentencing date for the DWI offense in question. *State v. Sola*, 354 Ark. 76, 118 S.W. 3d 95 (2003) (*see* Comment below).

Even before enactment of Ark. Code Ann. § 16-97-101, *et seq.*, governing bifurcated sentencing, it had been clearly indicated that in felony DWI prosecutions the court was not to instruct the jury as to sentence in the initial phase of the trial. *Peters v. State*, 286 Ark. 421, 692 S.W. 2d 243 (1985); *Wright v. State*, 17 Ark. App. 24, 702 S.W. 2d 811 (1986).

In determining whether a defendant has prior convictions for driving while intoxicated, negligent homicide convictions because of intoxication under Ark. Code Ann. § 5-10-105(a)(1)(A) or (B) should also be considered (see Comment).

When applicable, the bracketed language should be included.

COMMENT

The sentence provisions are found in Ark. Code Ann. § 5-65-111. The fine provisions are found in Ark. Code Ann. § 5-65-112. Section 5-65-111(f)(1) sets out the sentence provisions for a sixth or subsequent offense within 10 years of a prior offense, which constitutes a Class B felony, subject to the provisions of sections 5-4-201 (fine) and -401 (term).

See Lawson v. State, 295 Ark. 37, 746 S.W.2d 544 (1988) (defendant who has four prior non-DWI-related felony convictions cannot be sentenced under Ark. Code Ann. § 5-4-501, the general habitual offender statute, upon conviction of felony DWI under Ark. Code Ann. § 5-65-111(b)(3) based on being convicted of fourth DWI within three years, because penalty under specific enhancement statute (§ 5-65-111) cannot be stacked upon penalty under general habitual offender statute (§ 5-4-501)).

Ark. Code Ann. § 5-65-111(b) was amended in 1997 (Act 1236 of 1997) with the apparent intent to allow for enhancement based upon prior convictions in this state and in other state or foreign jurisdictions. The Committee has some reservations with respect to the possible construction of this amendment.

An amendment to the statute in 2009 (Act 650 of 2009) added negligent homicide convictions because of intoxication (Ark. Code Ann. § 5-10-105 (a)(1)(A) or (B)) to the convictions to be considered for the purpose of enhancement.

In *State v. Sola*, 354 Ark. 76, 118 S.W. 3d 95 (2003), the supreme court found that the wording of AMCI 2d 9201.4 with regard to prior offenses ("prior convictions for driving while intoxicated within five years immediately prior to the commission of this offense") was in conflict with the statutory language of Ark. Code Ann. § 5-65-111 ("for the . . . offense occurring within five (5) years of the first offense").

The facts in *Sola* show that on September 13, 2002, the defendant was convicted for a DWI offense committed on June 14, 2001. In considering prior offenses, the judge did not allow a conviction on September 26, 2001 for a DWI offense on July 11, 2001 because the offense did not occur prior to the commission of the June 14, 2001 offense.

However, the statute provides for offenses within a five-year period, and the chronological order in which the violations are prosecuted is immaterial. A DWI violation is not an offense until there is a conviction at which time "when the offense occurred" relates back to the day the violation was committed. Under the facts of the case, the June 14, 2001 violation became an offense on that date upon the conviction on September 13, 2002. At the time of sentencing on September 13, 2002, it was the defendant's fourth conviction for DWI, including the third offense, which occurred on July 11, 2001 as a result of the conviction on September 26, 2001. The critical point for counting DWI offenses is at the

sentencing phase at which time a determination is made as to the total number of DWI offenses within five years of the first alleged offense.

AMCI 2d 9202
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—HABITUAL OFFENDER—ORDINARY

You have found (defendant) **guilty of the offense of** (offense). The State has also alleged that (defendant) **is subject to an extended term of imprisonment as an habitual offender. It is my duty to instruct you that** (defendant) **has previously been convicted of** (felonies) **and is classified as an habitual offender.**

[Here the Court may advise the jury as to the nature of the previous convictions and the date and place of the previous convictions.]

The offense of (offense) **when committed by an habitual offender is punishable by imprisonment in the Arkansas Department of Correction for a term of** (select range from table in Note on Use) [or a fine (select appropriate amount from table in Note on Use)] [or both a term of imprisonment and a fine].

NOTE ON USE

This form should be used in conjunction with AMCI 2d 9312-VF when the defendant has previous felony convictions but the defendant is not subject to enhanced penalties as a serious-violent-felony habitual offender under Ark. Code Ann. § 5-4-501(c) or as a violent-felony habitual offender under Ark. Code Ann. § 5-4-501(d). In such case, Ark. Code Ann. § 5-4-501(a) sets out enhanced sentencing ranges applicable to an habitual offender who has previously been convicted of more than one but less than four felonies, and Ark. Code Ann. § 5-4-501(b) sets out enhanced sentencing ranges applicable to an habitual offender who has previously been convicted of four or more felonies. The following table sets out these enhanced sentencing ranges:

class	non-habitual	§ 501(a)(3) **habitual (2 or 3)**	§ 501(b)(3) **habitual (4 or more)**
y	10 to 40 or life	10 to 60, or life	10 to life
a	6 to 30	6 to 50	6 to 60
b	5 to 20	5 to 30	5 to 40
c	3 to 10	3 to 20	3 to 30
d	0 to 6	0 to 12	0 to 15
unclassified	punishable by less than life	(see note 1)	(see note 2)
unclassified	punishable by life	10 to 50, or life	10 to 50, or life

Note 1: Not more than 5 years more than the maximum sentence for the unclassified felony.

Note 2: Not more than twice the maximum sentence for the unclassified felony.

Ark. Code Ann. § 16-90-121 provides for a minimum term of imprisonment of ten years upon conviction of a second or subsequent felony involving the use of a firearm. If the jury finds in Stage One that the defendant committed a felony involving the use of a firearm and the court determines that the defendant has previously been convicted of committing a felony involving the use of a firearm, this instruction may be used in Stage Two to instruct the jury as to the previous conviction. In such case, the lower end of the sentencing range will be ten years.

Use the bracketed language concerning fines if a fine is authorized by law for the felony conviction. The verdict form should include the appropriate fine ranges depending on the classification of the offense in Ark. Code Ann. § 5-4-201. The following table sets out the range of fines:

Class A or B felony: not exceeding fifteen thousand dollars ($15,000)

Class C or D felony: not exceeding ten thousand dollars ($10,000)

Unclassified felony: in accordance with the statute defining the felony

See **Ark. Code Ann.§ 5-4-104.**

COMMENT

Ark. Code Ann. § 5-4-501(a) and (b).

The supreme court has ruled that the determination of previous convictions for purposes of enhancement of sentence is a question of law rather than a question of fact. *See Prichard v. State*, 300 Ark. 10, 775 S.W.2d 898 (1989); *Graham v. State*, 290 Ark. 107, 717 S.W.2d 203 (1986); *McGirt v. State*, 289 Ark. 7, 708 S.W.2d 620 (1986). Consequently, the procedure whereby the court rather than the jury determines previous convictions is constitutional. *Shockley v. State*, 282 Ark. 281, 668 S.W.2d 22 (1984). *See also Traylor v. State*, 304 Ark. 174, 801 S.W.2d 267 (1990), holding that defendant has no right to testify before the jury for purpose of controverting previous felony convictions.

Requiring the jury to decide an habitual offender's guilt without knowledge of the sentencing ranges applicable upon conviction as an habitual offender does not deprive the defendant of a fair trial. *Harris v. State*, 322 Ark. 167, 907 S.W.2d 729 (1995).

In *Jones v. State*, 357 Ark. 545, 182 S.W.3d 485 (2004), the Supreme Court held that AMCI 2d 9202 must give the jury the option of considering the imposition of a fine.

Inadmissible Convictions

The trial court has the responsibility of determining the preliminary issue of what evidence is admissible for purposes of applying the habitual offender statute. *McConahay v. State,* 257 Ark. 328, 516 S.W.2d 887 (1974). Evidence of prior convictions of misdemeanors is not admissible. *Backus v. State,* 253 Ark. 60, 484

S.W.2d 515 (1972). If the defendant has been convicted of a prior offense but has received a pardon from the governor, that previous conviction is not admissible. *Duncan v. State*, 254 Ark. 449, 494 S.W.2d 127 (1973). Also, if the previous conviction record does not indicate that the defendant was represented by counsel or that he had not voluntarily waived his right to counsel, then the record cannot be introduced. *Fike v. State*, 255 Ark. 956, 504 S.W.2d 363 (1974). This is true even if the offense occurred prior to *Gideon v. Wainwright,* 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *Fike v. State*, 255 Ark. 956, 504 S.W.2d 363 (1974).

An expunged conviction may not be used when proof of a prior felony is an element of an offense. However, an expunged conviction may be used to enhance a sentence as an habitual offender. *Irvin v. State*, 301 Ark. 416, 784 S.W.2d 763 (1990), citing *Gosnell v. State,* 284 Ark. 299, 681 S.W.2d 385 (1984).

Admissible Convictions

A conviction is admissible for purposes of the statute even though the defendant may have received probation or a suspended sentence. *Rogers v. State*, 260 Ark. 232, 538 S.W.2d 300 (1976). If the defendant pleaded guilty to separate counts of an offense which constituted separate occurrences, each of those convictions may be introduced despite the fact that the sentences were handed down on the same day. *Cox v. State*, 255 Ark. 204, 499 S.W.2d 630 (1973). However, if the defendant is convicted of burglary and the felony which was the object of the burglary, this is counted as only one offense. Ark. Code Ann. § 5-4-501(c).

A previous conviction may be used for enhancement purposes even if the conviction arose out of conduct occurring after the conduct forming the basis for the offense charged. *Gillie v. State*, 305 Ark. 296, 808 S.W.2d 320 (1991); *Jackson v. State*, 47 Ark. App. 86, 885 S.W.2d 303 (1994).

Three convictions for breaking or entering at three different places constitute three separate offenses for enhancement purposes. *Rolark v. State*, 299 Ark. 299, 772 S.W.2d 588 (1989). However, the Arkansas Supreme Court has held that "the term 'burglary' in § 5-4-501(c) includes the lesser included offense of breaking or entering and that breaking or entering and the object of that offense . . . should be considered a single felony conviction for purposes of enhancing punishment." *Thomas v. State*, 315 Ark. 79, 82–83, 864 S.W.2d 835 (1993).

The defendant may raise the issue of identity in his defense but is not entitled to claim that he was innocent of a properly proved conviction. *Harris v. State,* 273 Ark. 355, 620 S.W.2d 289 (1981); *Hobbs v. State,* 273 Ark. 125, 617 S.W.2d 347 (1981).

Sentencing as an habitual offender is not appropriate where a defendant charged with capital murder and as an habitual offender is convicted of capital murder. Habitual offender sentencing is appropriate only if he is convicted of a lesser offense. *Bussard v. State,* 300 Ark. 174, 778 S.W.2d 213 (1989).

AMCI 2d 9202.1
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—HABITUAL OFFENDER—PREVIOUS SERIOUS VIOLENT FELONY CONVICTION

You have found _____ *(defendant)* guilty of the offense of _____ *(offense)*. The State has also alleged that _____ *(defendant)* is subject to an extended term of imprisonment as a serious-violent-felony habitual offender.

The offense of _____ *(current offense)* is a serious felony involving violence. It is my duty to instruct you that _____ *(defendant)* has previously been convicted of (a serious felony involving violence) (serious felonies involving violence).

[Here the Court may advise the jury as to the nature of the previous serious violent felony conviction(s) and the date and place of the previous conviction(s).]

The offense of _____ *(offense)* when committed by a serious-violent-felony habitual offender is punishable by imprisonment in the Arkansas Department of Correction for a term of 40 to 80 years or life [; and a fine] (select appropriate amount for the serious-violent felony, see also Note on Use to AMCI 2d 9202)].

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 9312.1-VF when the defendant is convicted of a serious felony involving violence and has previously been convicted of one or more serious felonies involving violence. The following felonies are classified by Ark. Code Ann. § 5-4-501(c)(2) as serious felonies involving violence:

Murder in the first degree (§ 5-10-102)

Murder in the second degree (§ 5-10-103)

Class Y felony kidnapping (§ 5-11-102)

Aggravated robbery (§ 5-12-103)

Rape (§ 5-14-103)

Sexual assault in the first degree (§ 5-14-124)

Class Y terroristic act (§ 5-13-310)

Causing a catastrophe (§ 5-38-202)

Aggravated residential burglary (§ 5-39-204)

Aggravated assault on law enforcement officer or correctional facility employee (§ 5-13-211, if Class Y felony)

Comparable serious felony involving violence committed in another jurisdiction.

Use the bracketed language concerning fines if a fine is authorized by law for the serious violent felony conviction.

The sentencing range applicable to a serious-violent-felony offender is not less than 40 years nor more than 80 years or life except for conviction of rape or first

degree sexual assault involving a victim under the age of 14 in which case the sentence shall be life without the possibility of parole.

COMMENT

Ark. Code Ann. § 5-4-501(c).

The supreme court has ruled that the determination of previous convictions for purposes of enhancement of sentence is a question of law rather than a question of fact. *See Prichard v. State*, 300 Ark. 10, 775 S.W.2d 898 (1989); *Graham v. State*, 290 Ark. 107, 717 S.W.2d 203 (1986); *McGirt v. State*, 289 Ark. 7, 708 S.W.2d 620 (1986). Consequently, the procedure whereby the court rather than the jury determines previous convictions is constitutional. *Shockley v. State*, 282 Ark. 281, 668 S.W.2d 22 (1984). *See also Traylor v. State*, 304 Ark. 174, 801 S.W.2d 267 (1990), holding that defendant has no right to testify before the jury for purpose of controverting previous felony convictions.

Requiring the jury to decide an habitual offender's guilt without knowledge of the sentencing ranges applicable upon conviction as an habitual offender does not deprive the defendant of a fair trial. *Harris v. State*, 322 Ark. 167, 907 S.W.2d 729 (1995).

A defendant eligible to be sentenced to an extended term of imprisonment under both Ark. Code Ann. § 5-4-501(c) and (d) should be sentenced under § 5-4-501(d). *See* Ark. Code Ann. § 5-4-501(g) and *Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998).

AMCI 2d 9202.2
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—HABITUAL OFFENDER—PREVIOUS VIOLENT FELONY CONVICTION

You have found _____ *(defendant)* guilty of the offense of _____ *(offense)*. The State has also alleged that _____ *(defendant)* is subject to an extended term of imprisonment as a violent-felony habitual offender.

The offense of _____ *(current offense)* is a felony involving violence. It is my duty to instruct you that _____ *(defendant)* has previously been convicted _____ times of felonies involving violence.

[Here the Court may advise the jury as to the nature of the previous violent felony convictions and the date and place of the previous convictions.]

The offense of _____ *(offense)* when committed by a violent-felony habitual offender is punishable by imprisonment in the Arkansas Department of Correction for a term of _____ *(select from table in Note on Use)* [and a fine of _____ (select appropriate amount for the violent felony, see also Note on Use to AMCI 2d 9202)].

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 9312.2-VF when the defendant is convicted of a felony involving violence and has previously been convicted of two or more felonies involving violence. The following felonies are classified by Ark. Code Ann. § 5-4-501(d)(2) as felonies involving violence:

Murder in the first degree (§ 5-10-102)

Murder in the second degree (§ 5-10-103)

Kidnapping (§ 5-11-102)

Aggravated robbery (§ 5-12-103)

Rape (§ 5-14-103)

Battering in the first degree (§ 5-13-201)

Terroristic act (§ 5-13-310)

Sexual assault in the first degree (§ 5-14-124)

Sexual assault in the second degree (§ 5-14-125)

Domestic battering in the first degree (§ 5-26-303)

Residential burglary (§ 5-39-201)

Unlawful discharge of a firearm from a vehicle (§ 5-74-107)

Aggravated assault on law enforcement officer or correctional facility employee (§ 5-13-211, if Class Y felony)

Aggravated residential burglary (§ 5-39-204)

Class B felony use of prohibited weapon (§ 5-73-104)

Felony attempt, solicitation, or conspiracy to commit capital murder, murder in

the first degree, murder in the second degree, kidnapping, aggravated robbery, rape, battering in the first degree, residential burglary, aggravated residential burglary, or domestic battering in the first degree.

A conviction of a comparable felony involving violence committed in another jurisdiction.

Ark. Code Ann. § 5-4-501(d)(1) sets out the following enhanced sentencing ranges applicable to a violent-felony habitual offender:

Class of Current Felony	
Y	Life
A	40 to life
B	30 to 60
C	25 to 40
D	20 to 40
Unclassified	Up to 3 times the maximum sentence for the unclassified offense

Use the bracketed language concerning fines if a fine is authorized by law for the violent felony conviction.

COMMENT

Ark. Code Ann. § 5-4-501(d).

The supreme court has ruled that the determination of previous convictions for purposes of enhancement of sentence is a question of law rather than a question of fact. *See Prichard v. State*, 300 Ark. 10, 775 S.W.2d 898 (1989); *Graham v. State*, 290 Ark. 107, 717 S.W.2d 203 (1986); *McGirt v. State*, 289 Ark. 7, 708 S.W.2d 620 (1986). Consequently, the procedure whereby the court rather than the jury determines previous convictions is constitutional. *Shockley v. State*, 282 Ark. 281, 668 S.W.2d 22 (1984). *See also Traylor v State*, 304 Ark. 174, 801 S.W.2d 267 (1990), holding that defendant has no right to testify before the jury for purpose of controverting previous felony convictions.

Requiring the jury to decide an habitual offender's guilt without knowledge of the sentencing ranges applicable upon conviction as an habitual offender does not deprive the defendant of a fair trial. *Harris v. State*, 322 Ark. 167, 907 S.W.2d 729 (1995).

A defendant eligible to be sentenced to an extended term of imprisonment under both Ark. Code Ann. § 5-4-501(c) and (d) should be sentenced under § 5-4-501(d). *See* Ark. Code Ann. § 5-4-501(g) and *Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998).

In *Bunch v. State*, 344 Ark. 730, 43 S.W.3d 132 (2001), the court upheld a mandatory life sentence upon conviction of a third violent felony despite the defendant's contention that Ark. Code Ann. § 5-4-501(d)(1)(A) was unconstitutional because it did not allow the jury to impose a sentence within a statutory range.

In *Beavers v. State,* 345 Ark. 291, 46 S.W.3d 532 (2001), defendant was charged with separate violent felonies committed on different dates. The state secured a conviction for the later conduct and then used that conviction to enhance the sentence for conviction of the earlier conduct. The supreme court ruled that the plain language of Ark. Code Ann. § 5-4-501(d) permits enhancement for a prior conviction and that the sequence in which the offenses were committed is irrelevant.

AMCI 2d 9203
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—FIREARM

You have found _____ *(defendant)* guilty of the offense of _____ *(felony)* and have further found that _____ *(defendant)* employed a firearm as a means of (committing) (or) (escaping from commission of) the offense. Employing a firearm as a means of (committing) (or) (escaping from the commission of) _____ *(felony)* is punishable by imprisonment in the Arkansas Department of Correction for an extended term not to exceed 15 years. The term of imprisonment for employing a firearm is in addition to any term of imprisonment for the offense of _____ *(felony)*.

NOTE ON USE

This instruction should be used when the jury has determined in Stage One that the defendant employed a firearm as a means of committing or escaping from a felony. *See* AMCI 2d 8201-EXP-F and 8302-VF.

AMCI 2d 9204
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—FELONY IN PRESENCE OF A CHILD

You have found _____ *(defendant)* guilty of the offense of _____ *(felony)* and have further found that *(defendant)* committed the offense in the presence of a child. Committing the offense of _____ *(felony)* in the presence of a child is punishable by imprisonment in the Arkansas Department of Correction for an extended term of *[not less than 1 and not more than 10 years] [not more than 5 years]*. The term of imprisonment for committing the offense in the presence of a child is in addition to any term of imprisonment imposed for the offense of _____ *(felony)*.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 9316-VF when the jury has determined in Stage One that the defendant committed a certain felony or felonies in the presence of a child. See AMCI 2d 8203-EXP and 8303-VF.

The 2019 amendment in Act 324 altered the listing of eligible felonies. The eligible felonies now are Capital murder, § 5-10-101; Murder in the first degree, § 5-10-102; Murder in the second degree, § 5-10-103; Aggravated robbery, § 5-12-103; a felony offense of assault or battery under § 5-13-201 et seq.; Rape, § 5-14-103; Sexual assault in the second degree, § 5-14-125; and a felony offense of domestic battering or assault on a family or household member under § 5-26-303—§ 5-26-309

The 2019 amendment removed Manslaughter and added Aggravated Robbery, Rape and Sexual Assault in the Second Degree as eligible felonies.

Prior to the 2019 amendment, the eligible felonies were listed as homicide, assault, battery, domestic battering, or assault on a family member or household member.

The bracket for five years should be used for the offense of aggravated cruelty to a dog, cat, or equine.

COMMENT

Ark. Code Ann. § 5-4-702.

Act 1220 of 2015 added Ark. Code Ann. § 5-4-703 that provides "the court shall assess an additional fine of $25" if the finder of fact has determined that an enumerated list of offenses was committed in the presence of a child. Act 714 of 2017 increased the fine from $25 to $100.

(Text continued on page 92-37)

AMCI 2d 9205
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—METHAMPHETAMINE OFFENSE IN PRESENCE OF CERTAIN PERSONS

You have found _____ *(defendant)* guilty of the offense of (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine) and have further found that _____ (*defendant*) committed the offense (in the presence of (a minor) (an elderly person) (an incompetent person) (with (a minor) (an elderly person) (an incompetent person) in the same home or building where the methamphetamine was being manufactured or where the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used) (with (a minor) (an elderly person) (an incompetent person) present in the same immediate area or in the same vehicle at the time of _____ (*defendant's*) arrest for the offense). Committing the offense of (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine) (in the presence of (a minor) (an elderly person) (an incompetent person)) (with (a minor) (an elderly person) (an incompetent person) in the same home or building where the methamphetamine was being manufactured or where the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used) (with (a minor) (an elderly person) (an incompetent person) present in the same immediate area or in the same vehicle at the time of _____ (*defendant's*) arrest for the offense) is punishable by imprisonment in the Arkansas Department of Correction for an extended term of 10 years. The term of imprisonment for committing the offense in the presence of (a minor) (an elderly person) (an incompetent person) is in addition to any term of imprisonment imposed for the offense of (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine).

NOTE ON USE

This instruction should be use in conjunction with AMCI 2d 9317 when the jury has determined in Stage One that the defendant committed a methamphetamine offense in the presence of a minor, an elderly person, or an incompetent person. *See* AMCI 2d 8204-EXP and 8304-VF.

COMMENT

Ark. Code Ann. § 5-64-407.

AMCI 2d 9206
STAGE TWO—ENHANCED FELONY—DOMESTIC BATTERING

You have found (defendant) guilty of the offense of domestic battering in the (first) (second) (third) degree. The State has also alleged that (defendant) is subject to enhanced penalties because within 5 years of the current offense, (he) (she) has [committed domestic battering in the (first) (second) (third) degree] [committed aggravated assault on a family or household member] [violated an equivalent penal law of (this state) (another state) (a foreign jurisdiction)]. The State has the burden of proving beyond a reasonable doubt that within 5 years of the current offense, (defendant) has [committed domestic battering in the (first) (second) (third) degree] [committed aggravated assault on a family or household member] [violated an equivalent penal law of (this state) (another state) (a foreign jurisdiction)].

If you find that the State has proved that within 5 years of the current offense, (defendant) [committed domestic battering in the (first) (second) (third) degree] [committed aggravated assault on a family or household member] [violated an equivalent penal law of (this state) (another state) (a foreign jurisdiction)], you shall sentence (him) (her) to imprisonment in the Department of Correction for not less than _____ years and not more than _____ years, or to a fine not exceeding $_____ , or to both imprisonment and a fine.

If you find that the State has not proved that within 5 years of the current offense, (defendant) has [committed domestic battering in the (first) (second) (third) degree] [committed aggravated assault on a family or household member] [violated an equivalent penal law of (this state) (another state) (a foreign jurisdiction)], you shall sentence (him) (her) to imprisonment in the Department of Correction for not less than _____ years and not more than _____ years, or to a fine not exceeding $_____ , or to both imprisonment and a fine.

NOTE ON USE

Domestic battering is enhanced if, within 5 years of the conduct on which the current prosecution is based, the defendant committed domestic battering in any degree, committed aggravated assault on a family or household member, or violated an equivalent penal law of this state or another state or foreign jurisdiction. This instruction should be used in conjunction with AMCI 2d 9310-VF when the state charges that defendant committed another offense within the five year period.

AMCI 2d 9206.1
STAGE TWO—ENHANCED FELONY—DOMESTIC BATTERING

You have found _____ *(defendant)* guilty of the offense of domestic battering in the (second) (third) degree. The State has also alleged that _____ *(defendant)* is subject to enhanced penalties because within 10 years of the current offense, (he)(she) committed two or more offenses of domestic battering against a family or household member as defined by the laws of [this State] [any other state] [a foreign jurisdiction].

The State has the burden of proving beyond a reasonable doubt that within 10 years of the current offense, (he) (she) committed two or more offenses of domestic battering against a family or household member as defined by the laws of [this State] [any other state] [a foreign jurisdiction].

If you find that the State has proved that within 10 years of the current offense, _____ *(defendant)* committed two or more offenses of domestic battering against a family or household member as defined by the laws of [this state] [any other state] [a foreign jurisdiction], you shall sentence (him) (her) to imprisonment in the Department of Correction for not less than _____ years and not more than _____ years, or to a fine not exceeding $ _____, or to both imprisonment and a fine.

If you find that the State has not proved that within 10 years of the current offense, _____ *(defendant)* committed two or more offenses of domestic battering against a family or household member as defined by the laws of [this State] [any state] [a foreign jurisdiction], you shall sentence (him) (her) to imprisonment in the Department of Correction for not less than _____ years and not more than _____ years, or to a fine not exceeding $ _____or to imprisonment and a fine.

NOTE ON USE

The sentence for domestic battering in the second degree and domestic battering in the third degree is enhanced if, within ten years of the conduct on which the current prosecution is based, the defendant committed two or more offenses of domestic battering in any degree against a family or household member as defined by the laws of this state, any other state, or any foreign jurisdiction. This instruction should be used in conjunction with AMCI 2d 9310.1–VF when the state charges that defendant has committed two other offenses of domestic battering within a ten year period.

AMCI 2d 9207
STAGE TWO: TERRORISM—ENHANCEMENT FOR INJURY TO CERTAIN PERSONS

You have found _____ *(defendant)* guilty of the offense of terrorism and have further found that _____ *(defendant's)* acts caused serious physical injury to a (law enforcement officer) (or) (fire fighter) (or) (emergency service technician) providing emergency assistance at the scene of the alleged act of terrorism. Causing serious physical injury in these circumstances is punishable by imprisonment in the Arkansas Department of Correction for an extended term of 10 years. The term of imprisonment for causing serious physical injury in these circumstances is in addition to any term of imprisonment imposed for the offense of terrorism.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 9319 when the jury has determined in Stage One that the defendant's act of terrorism caused serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism. *See* AMCI 2d 5506-EXP and 5506-VF.

COMMENT

Ark. Code Ann. § 5-54-206.

AMCI 2d 9208
STAGE TWO—ENHANCED FELONY—AGGRAVATED CRUELTY TO DOG, CAT, OR HORSE—PREVIOUS CONVICTION OF AGGRAVATED CRUELTY

You have found (defendant) guilty of the offense of aggravated cruelty to a dog, cat, or horse. The State has also alleged that (defendant) within 5 years preceding the commission of the current offense, (he) (she) has [been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse] [been convicted of an equivalent penal law of (another state) (a foreign jurisdiction)]. The State has the burden of proving beyond a reasonable doubt that within 5 years preceding the commission of the current offense, (defendant) has been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse.

If you find that the State has proved that within 5 years preceding the commission of the current offense, (defendant) has [been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse] [been convicted of an equivalent penal law of (another state) (a foreign jurisdiction)], you shall sentence (him) (her) to imprisonment in the Department of Correction for not less than _____ years and not more than _____ years, or to a fine not exceeding $_____ , or to both imprisonment and a fine.

If you find that the State has not proved that within 5 years preceding the commission of the current offense, (defendant) has [been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse] [been convicted of an equivalent penal law of (another state) (a foreign jurisdiction)], you shall sentence (him) (her) to imprisonment in the Department of Correction for not less than _____ years and not more than _____ years, or to a fine not exceeding $_____ , or to both imprisonment and a fine.

NOTE ON USE

Aggravated cruelty to a dog, cat, or horse is a Class D felony; however, if within 5 years of the conduct on which the current prosecution is based, the defendant has been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse, the offense is a Class C felony. This instruction should be used in conjunction with AMCI 2d 9320-VF when the state charges that defendant has been convicted of a prior offense within the five year period. Each alleged act of the offense of aggravated cruelty to a dog, cat, or horse committed against more than one dog, cat or horse may constitute a separate offense. For the sole purpose of calculating the number of previous offenses, all offenses of aggravated cruelty to a dog, cat or horse that are committed against one or more dogs, cats, or horses, as part of the same criminal episode are a single offense. "Criminal episode" means an act that constitutes the offense of aggravated cruelty to a dog, cat, or horse, committed by a person against one or more dogs, cats, or horses within a period of twenty-four hours.

AMCI 2d 9209
STAGE TWO—EXTENDED TERM OF IMPRISONMENT—TARGETING LAW ENFORCEMENT OFFICER, FIRST RESPONDER, OR THEIR FAMILY

You have found _____ *(defendant)* guilty of the offense of _____ and have further found that _____ *(defendant)* in committing the offense targeted the victim because the victim was (currently employed) (or) (formerly employed) as a (law enforcement officer) (or) (first responder) (or) (a family member of a current or former (law enforcement officer) (or) (first responder)).

Targeting the victim in committing the offense of _____ is punishable by imprisonment

[for not more than one year]

[for not less than six months but not more than two years]

[for not less than two years but no more than ten years]

in the Arkansas Department of Correction. The term of imprisonment for targeting the victim is in addition to any term of imprisonment imposed for the offense of _____.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 9321-VF when the jury has determined in Stage One that the defendant targeted the victim. *See* AMCI 2d 8206-EXP and 8305-VF.

The bracket for one year or less should be used if the person is convicted of a Class A misdemeanor or an unclassified misdemeanor with a possible sentence greater than ninety days' imprisonment. The bracket for the range of 6 months to two years should be used if the person is convicted of a Class C felony, Class D felony, or an unclassified felony. The bracket for the range of two years to ten years should be used if the person is convicted of a Class Y felony, Class A felony, or Class B felony.

COMMENT

Ark. Code Ann. § 5-4-704.

AMCI 2d 9210
STAGE TWO—ENHANCED FELONY—CRIMINAL TRESPASS

You have found (defendant) guilty of the offense of criminal trespass. The State has also alleged that (defendant) is subject to enhanced penalties because (he) (she) has committed two or more previous acts of criminal trespass. The State has the burden of proving beyond a reasonable doubt that (defendant) has committed two or more previous acts of criminal trespass.

If you find that the State has proved that (defendant) has committed two or more previous acts of criminal trespass, you shall sentence (him) (her) to imprisonment in the Department of Correction

for not more than _____ years, or

to a fine not exceeding $_____, or

to both imprisonment and a fine.

If you find that the State has not proved that (defendant) has committed two or more previous acts of criminal trespass, you shall sentence (him) (her)

to a term of _____ in the county jail, or

to a fine not exceeding $_____, or

to both imprisonment and a fine.

NOTE ON USE

Criminal Trespass is enhanced if the defendant has two (2) or more convictions for a Class A misdemeanor violation of Ark. Code Ann. § 5-39-203 or § 5-39-305. This instruction should be used in conjunction with AMCI 2d 9322-VF.

AMCI 2d 9211
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—TARGETING VICTIM AT CHURCH OR OTHER PLACE OF WORSHIP—SERIOUS VIOLENT FELONY

You have found _____ *(defendant)* guilty of the offense of _____ *(offense)*. The offense of _____ *(offense)* is a serious felony involving violence. The State has also alleged that _____ *(defendant)* is subject to an extended term of imprisonment because the victim was present on the grounds of a church or other place of worship at the time of the offense.

Targeting the victim on church or place of worship grounds is punishable by imprisonment in the Arkansas Department of Correction for a term of not less than one year and not more than ten years.

The term of imprisonment for the offense of selecting the victim on church or place of worship grounds is in addition to any term of imprisonment imposed for the offense of _____.

NOTE ON USE

This instruction should be used in conjunction with AMCI 2d 9323-VF. The following felonies are listed in Ark. Code Ann. § 5-4-707 as subject to this enhancement and would be inserted in the instruction where indicated.

Murder in the first degree (§ 5-10-102)

Murder in the second degree (§ 5-10-103)

Battery in the first degree (§ 5-13-201)

Aggravated assault (§ 5-13-204)

Terroristic threatening (§ 5-13-301, if felony)

Terroristic act (§ 5-13-310)

Causing a catastrophe (§ 5-38-202 (a))

Arson (§ 5-38-301)

Terrorism (§ 5-54-205)

A felony offense under § 5-54-201

Unlawful discharge of a firearm from a vehicle under § 5-74-107

Criminal use of prohibited weapons (§ 5-73-104) involving an activity making it a Class B felony

A felony attempt, solicitation, or conspiracy to commit an offense listed if the attempt, solicitation, or conspiracy is a felony.

COMMENT

Ark. Code Ann. § 5-4-707.

The additional term of imprisonment under this section is for a minimum of one year but no more than ten years in the Department of Correction, and it is

consecutive to any other sentence imposed. The defendant is not eligible for early release on parole or community correction transfer for the additional term of imprisonment.

CHAPTER 93

STAGE TWO: VERDICT FORMS—STANDARD & ENHANCED

SYNOPSIS

9301-VF. Stage Two: Standard Verdict Form—Class Y Felony

9302-VF. Stage Two: Standard Verdict Form—Class A Felony

9303-VF. Stage Two: Standard Verdict Form—Class B Felony

9304-VF. Stage Two: Standard Verdict Form—Class C Felony

9305-VF. Stage Two: Standard Verdict Form—Class D Felony

9306-VF. Stage Two: Standard Verdict Form—Unclassified Felony

9307-VF. Stage Two: Standard Verdict Form—Class A Misdemeanor

9307.1-VF. Stage Two: Standard Verdict Form—First Offense Driving or Boating While Intoxicated

9308-VF. Stage Two: Standard Verdict Form—Class B Misdemeanor

9309-VF. Stage Two: Standard Verdict Form—Class C Misdemeanor

9310-VF. Stage Two: Standard Verdict Form—Previous Convictions Of Domestic Battering

9310.1. Stage Two: Standard Verdict Form—Enhanced Felony—Domestic Battering

9310.1-VF. Stage Two: Standard Verdict Form—Enhanced Felony—Domestic Battering

9312-VF. Stage Two: Standard Verdict Form—Habitual Offender—All Classified Felonies

9312.1-VF. Stage Two: Standard Verdict Form—Serious-Violent-Felony Habitual Offender

9312.2-VF. Stage Two: Standard Verdict Form—Violent-Felony Habitual Offender

9313-VF. Stage Two: Verdict Form—Habitual Offender Unclassified Felony

9314-VF. Stage Two—Felony Involving Use Of Firearm—Verdict Form

9315-VF. Stage Two: Driving or Boating While Intoxicated—Verdict Form—Habitual Offender

9316-VF. Stage Two: Felony In Presence Of Child—Verdict Form

9317-VF. Stage Two: Extended Term of Imprisonment—Methamphetamine Offense In Presence of Certain Persons

9318-VF. Stage Two: Standard Verdict Form—Consecutive Sentence Recommendation

9319-VF. Terrorism—Stage Two Verdict Form—Enhancement For Injury To Certain Persons

9320-VF. Stage Two: Standard Verdict Form—Previous Conviction Of Aggravated Cruelty To A Dog, Cat, Or Horse

9321-VF. Stage Two: Targeting Law Enforcement Officer, First Responder, Or Their Family

9322-VF. Stage Two: Standard Verdict Form—Enhanced Felony—Criminal Trespass

9323-VF. Stage Two: Extended Term Of Imprisonment—Targeting Victim At Church Or Other Place Of Worship—Serious Violent Felony

(Text continued on page 93-3)

AMCI 2d 9301-VF

STAGE TWO: STANDARD VERDICT FORM — CLASS Y FELONY

We, the Jury, having found _____ *(defendant)* **guilty of** _____ *(offense)*, **fix his sentence at:**

A term of _____ *(not less than 10 years nor more than 40 years, or life)* **in the Arkansas Department of Correction.**

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given the jury in all cases when the defendant has been found guilty of a Class Y felony, except when the defendant is charged as an habitual offender or has been found guilty of using a firearm or deadly weapon to commit an offense.

AMCI 2d 9302-VF

STAGE TWO: STANDARD VERDICT FORM — CLASS A FELONY

We, the Jury, having found _____ *(defendant)* **guilty of** _____ *(offense)*, **fix his sentence at:**

(A) A term of _____ *(not less than 6 years nor more than 30 years)* **in the Arkansas Department of Correction; or**

(B) A fine of _____ *(not exceeding $15,000)* **dollars; or**

(C) Both a term of _____ *(not less than 6 years nor more than 30 years)* **in the Arkansas Department of Correction and a fine of** _____ *(not exceeding $15,000)* **dollars.**

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given the jury in all cases when the defendant has been found guilty of a Class A felony, except when the defendant is charged as an habitual offender or has been found guilty of using a firearm or deadly weapon to commit an offense.

AMCI 2d 9303-VF

STAGE TWO: STANDARD VERDICT FORM — CLASS B FELONY

We, the Jury, having found _____ *(defendant)* **guilty of** _____ *(offense)*, **fix his sentence at:**

(A) A term of _____ *(not less than 5 years nor more than 20 years)* **in the Arkansas Department of Correction; or**

(B) A fine of _____ *(not exceeding $15,000)* **dollars; or**

(C) Both a term of _____ *(not less than 5 years nor more than 20 years)* **in the Arkansas Department of Correction and a fine of** _____ *(not exceeding $15,000)* **dollars.**

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given the jury in all cases when the defendant has been found guilty of a Class B felony, except when the defendant is charged as an habitual offender or has been found guilty of using a firearm or deadly weapon to commit an offense.

AMCI 2d 9304-VF

STAGE TWO: STANDARD VERDICT FORM — CLASS C FELONY

We, the Jury, having found _____ *(defendant)* **guilty of** _____ *(offense)*, **fix his sentence at:**

(A) A term of _____ *(not less than 3 years nor more than 10 years)* **in the Arkansas Department of Correction; or**

(B) A fine of _____ *(not exceeding $10,000)* **dollars; or**

(C) Both a term of _____ *(not less than 3 years nor more than 10 years)* **in the Arkansas Department of Correction and a fine of** _____ *(not exceeding $10,000)* **dollars.**

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given the jury in all cases when the defendant has been found guilty of a Class C felony, except when the defendant is charged as an habitual offender or has been found guilty of using a firearm or deadly weapon to commit an offense.

AMCI 2d 9305-VF

STAGE TWO: STANDARD VERDICT FORM — CLASS D FELONY

We, the Jury, having found _____ *(defendant)* **guilty of** _____ *(offense)*, **fix his sentence at:**

(A) A term of _____ *(not more than 6 years)* **in the Arkansas Department of Correction; or**

(B) A fine of _____ *(not exceeding $10,000)* **dollars; or**

(C) Both a term of _____ *(not more than 6 years)* **in the Arkansas Department of Correction and a fine of** _____ *(not exceeding $10,000)* **dollars.**

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given the jury in all cases when the defendant has been found guilty of a Class D felony, except when the defendant is charged as an habitual offender or has been found guilty of using a firearm or deadly weapon to commit an offense.

AMCI 2d 9306-VF

STAGE TWO: STANDARD VERDICT FORM — UNCLASSIFIED FELONY

NOTE ON USE

Use the verdict form in conjunction with AMCI 2d 9111.

Where the felony is unclassified, the verdict form should follow the form of AMCI 2d 9302, using the minimum and maximum ranges of punishment and fines set out in the statute, except in controlled substances cases under Ark. Code Ann. § 5-64-401(a)(1)(i)-(iii). In the latter cases the verdict form should require the jury to impose both imprisonment and a fine. *See* Note on Use to AMCI 2d 9106.

AMCI 2d 9307-VF

STAGE TWO: STANDARD VERDICT FORM — CLASS A MISDEMEANOR

We, the Jury, having found _____ *(defendant)* **guilty of** _____ *(offense)*, **fix his sentence at:**

(A) A term of _____ *(not more than 1 year)* **in the county jail; or**

(B) A fine of _____ *(not exceeding $1,000)*; **or**

(C) Both a term of _____ *(not more than 1 year)* **in the county jail and a fine of** _____ *(not exceeding $1,000)*.

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given when the defendant has been convicted of a Class A misdemeanor.

AMCI 2d 9307.1-VF
STAGE TWO: STANDARD VERDICT FORM—FIRST OFFENSE DRIVING OR BOATING WHILE INTOXICATED

We, the Jury, having found _____ (defendant) guilty of (driving) (or) (boating) **while intoxicated, fix his sentence at:**

(A) A term of _____ [not less than 24 hours nor more than one year] [not less than seven days nor more than one year]

in the county jail; and

(B) A fine of _____ (not less than $150 nor more than $1,000).

A term of imprisonment and a fine must be imposed in every case.

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9107.1 and 9111.

This verdict form should be given when the defendant has been convicted of first offense DWI/BWI. The second set of brackets in paragraph A are used when the defendant is subject to the enhanced punishment for committing the offense with a child passenger.

AMCI 2d 9308-VF
STAGE TWO: STANDARD VERDICT FORM— CLASS B MISDEMEANOR

We, the Jury, having found _____ (defendant) guilty of _____ (offense), fix his sentence at:

(A) A term of _____ (not more than 90 days) in the county jail; or

(B) A fine of _____ (not exceeding $500); or

(C) Both a term of _____ (not more than 90 days) in the county jail and a fine of _____ (not exceeding $500).

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given when the defendant has been convicted of a Class B misdemeanor.

AMCI 2d 9309-VF
STAGE TWO: STANDARD VERDICT FORM— CLASS C MISDEMEANOR

We, the Jury, having found _____ (defendant) guilty of_____(offense), fix his sentence at:

(A) A term of _____ (not more than 30 days) in the county jail; or

(B) A fine of _____ (not exceeding $100); or

(C) Both a term of _____ (not more than 30 days) in the county jail and a fine of _____ (not exceeding $100).

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111.

This verdict form should be given when the defendant has been convicted of a Class C misdemeanor.

AMCI 2d 9310-VF
STAGE TWO: STANDARD VERDICT FORM—ENHANCED FELONY—DOMESTIC BATTERING

We, the Jury, having found (defendant) guilty of the offense of domestic battering in the (first) (second) (third) degree, further find that within 5 years of the current offense, (defendant) [committed domestic battering in the (first) (second) (third) degree] [committed aggravated assault on a family or household member] [violated an equivalent penal law of (this state) (another state) (a foreign jurisdiction)] and fix (his) (her) sentence at:

(A) A term of _____ in the Arkansas Department of Correction; or

(B) A fine of _____ dollars; or

(C) Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREMAN

We, the Jury, having found (defendant) guilty of the offense of domestic battering in the (first) (second) (third) degree, do not find that within 5 years of the current offense, (defendant) [committed domestic battering in the (first) (second) (third) degree] [committed aggravated assault on a family or household member] [violated an equivalent penal law of (this state) (another state) (a foreign jurisdiction)] and fix (his) (her) sentence at:

(A) A term of _____ in the Arkansas Department of Correction; or

(B) A fine of _____ dollars; or

(C) Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9206 when the State alleges that the offense committed by defendant should be classified more seriously because of conduct occurring within 5 years of the current offense. The court should insert in the verdict form the appropriate sentence ranges depending on the classification of the offense in the statute defining the offense.

AMCI 2d 9310.1-VF
STAGE TWO: STANDARD VERDICT FORM—ENHANCED FELONY—DOMESTIC BATTERING

We, the Jury, having found _____ *(defendant)* guilty of the offense of domestic battering in the (second) (third) degree, further find that within 10 years of the current offense, _____ *(defendant)* committed two or more offenses of domestic battering against a family or household member as defined by the laws of [this State] [another state] [a foreign jurisdiction] and fix (his) (her) sentence at:

(A) A term of _____ in the Arkansas Department of Correction; or

(B) A fine of _____ dollars; or

(C) Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREMAN

We, the Jury, having found _____ *(defendant)* guilty of the offense of domestic battering in the (second) (third) degree, do not find that within 10 years of the current offense, _____ *(defendant)* committed two or more offenses of domestic battering against a family or household member as defined by the laws of [this State] [another State] [a foreign jurisdiction] and fix (his) (her) sentence at:

(A) a term of _____ in the Arkansas Department of Correction; or

(B) a fine of _____ dollars; or

(C) Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9206.1 when the State alleges that the offense committed by defendant should be classified more seriously because for conduct occurring within 10 years of the current offense, the defendant has previously been convicted of domestic battering. The court should insert in the verdict form the appropriate sentence ranges depending on the classification of the offense in the statute defining the offense.

(Text continued on page 93-27)

AMCI 2d 9312-VF
STAGE TWO: STANDARD VERDICT FORM— HABITUAL OFFENDER—ALL CLASSIFIED FELONIES

We, the Jury, fix the sentence of _____ (defendant) **at:**

a term of _____ *(select range from Note on Use to AMCI 2d 9202 and insert)* **in the Arkansas Department of Correction; or**

[a fine of $ _____ *(select appropriate amount for the felony and insert, also see Note on Use to AMCI 2d 9202)*; **or**

both a term of _____ *(select range)* **in the Arkansas Department of Correction and a fine of $**_____ *(select range)*].

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111 and 9202. Use the bracketed language concerning fines if a fine is authorized by law for the felony conviction.

AMCI 2d 9312.1-VF
STAGE TWO: STANDARD VERDICT FORM—SERIOUS-VIOLENT-FELONY HABITUAL OFFENDER

We, the Jury, fix the sentence of _____*(defendant)* at a term of _____*(40 to 80 years or life)* imprisonment in the Arkansas Department of Correction)

[, and a fine of $ _____*(select appropriate amount for the serious-violent felony and insert, also see* Note on Use to AMCI 2d 9202)].

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111 and 9202.1. Use the bracketed language concerning fines if a fine is authorized by law for the serious-violent-felony conviction.

The instruction should be modified for convictions of rape or first degree sexual assault involving a victim under the age of 14 in which case the sentence is life without the possibility of parole. Ark Code Ann 5-4-501 (c) (3).

(Text continued on page 93-29)

AMCI 2d 9312.2-VF
STAGE TWO: STANDARD VERDICT FORM — VIOLENT-FELONY HABITUAL OFFENDER

We, the Jury, fix the sentence of _____*(defendant)* at a term of _____ *(select range from Note on Use to AMCI 2d 9202.2 and insert)* in the Arkansas Department of Correction)

[, and a fine of $ _____*(select appropriate amount for the violent felony and insert, also see* Note on Use to AMCI 2d 9202)].

_____

FOREMAN

NOTE ON USE

Use this verdict form in conjunction with AMCI 2d 9111 and 9202.2.

Use the bracketed language concerning fines if a fine is authorized by law for the violent-felony conviction.

(Text continued on page 93-31)

AMCI 2d 9313-VF

STAGE TWO: VERDICT FORM — HABITUAL OFFENDER — UNCLASSIFIED FELONY

NOTE ON USE

Where the felony is unclassified, the verdict form should follow the form 9312-VF. Use the minimum and maximum ranges of punishment set out in the statute defining the offense, with enhancements required by Ark. Code Ann. §§ 5-4-501(a)(6)-(7) and (b)(6)-(7) (habitual offender enhancement).

Use this verdict form in conjunction with AMCI 2d 9111.

AMCI 2d 9314-VF

STAGE TWO: FELONY INVOLVING USE OF A FIREARM — VERDICT FORM

We, the Jury, having found that _____ *(defendant)* **employed a firearm as a means of** (committing) (or) (escaping from the commission of) **the offense of** _____ *(felony)*, **fix** (his) (her) **sentence at a term of** _____ *(not to exceed 15 years)* **in the Arkansas Department of Correction.**

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9203 when the jury has determined in Stage One that the defendant employed a firearm as a means of committing or escaping from a felony. *See* AMCI 2d 8201-EXP-F and 8302-VF. This form should be provided to the jury in addition to the appropriate standard verdict form fixing the term of imprisonment for the underlying felony.

AMCI 9315-VF
STAGE TWO: DRIVING OR BOATING WHILE INTOXICATED—VERDICT FORM—HABITUAL OFFENDER

I

[**We, the Jury, find that** _____ (*defendant*) **has previously been convicted five or more times of driving (or boating) while intoxicated** [or felony negligent homicide while intoxicated] **and fix his sentence at**

(A) a term of _____ [*not less than 5 years nor more than 20 years*] **in the Arkansas Department of Correction**; or

(B) a fine of _____ **(not more than $15,000), or both imprisonment and a fine.]**

[**We, the Jury, find that** _____ (*defendant*) **has previously been convicted four or more times of driving (or boating) while intoxicated** [or felony negligent homicide while intoxicated] **and fix his sentence at**

(A) a term of _____ [*not less than 2 years nor more than 10 years*] [*not less than 3 years nor more than 10 years*] **in the Arkansas Department of Correction**, and

(B) a fine of _____ **(not less than $900 nor more than $5,000).]**

_____

FOREMAN

II

[**We, the Jury, find that** _____ **(defendant) has previously been convicted three times of driving** (or boating) **while intoxicated** [or felony negligent homicide while intoxicated] **and fix his sentence at**

(A) a term of _____ *[not less than one year nor more than six years] [not less than two years nor more than six years]* **in the Arkansas Department of Correction; and**

(B) a fine of _____ *(not less than $900 nor more than $5,000)*].

_____

FOREMAN

III

We, the Jury, find that _____ **(defendant) has previously been convicted two times of driving** (or boating) **while intoxicated** [or felony negligent homicide while intoxicated] **and fix his sentence at**

(A) a term of _____ *[not less than 90 days nor more than one year] [not less than 120 days nor more than one year]*

in the county jail; and

(B) a fine of _____ *(not less than $900 nor more than $5,000).*

_____

FOREMAN

IV

We, the Jury, find that _____ **(defendant) has previously been convicted one time of driving** (or boating) **while intoxicated** [or felony negligent homicide while intoxicated] **and fix his sentence at**

(A) a term of _____ *[not less than 7 days nor more than 1 year] [not less than 30 days nor more than 1year]*

in the county jail; and

(B) a fine of _____ *(not less than $400 nor more than $3,000).*

_____

FOREMAN

V

We, the Jury, find that _____ **(Defendant) has not previously been convicted of driving** (or boating) **while intoxicated** [or felony negligent homicide while intoxicated] **and fix his sentence at a term of** _____ *[not less than 24 hours nor more than 1 year] [not less than 7 days nor more than 1 year]*

in the county jail, and a fine of _____ *(not less than $150 nor more than $1,000).*

_____

FOREMAN

NOTE ON USE

Use the applicable bracketed option under Part I of this instruction depending upon whether the prosecution is based on Ark. Code Ann. § 5-65-111(e)(1) (four or more priors within five years) or (f)(1) (five or more prior convictions within 10 years is a Class B felony).

These forms should be used in conjunction with AMCI 2d 9111 and 9201.4.

The second bracketed option for length of term in subparagraph (A) of each numbered paragraph is used when the defendant is subject to enhanced punishment for committing the offense with a child passenger.

Conviction of negligent homicide based on intoxication, Ark. Code Ann. § 5-10-105(a)(1)(A) or (B), is considered a prior offense of driving while intoxicated. Ark. Code Ann. § 5-65-111(j). See Comment to AMCI 2d 9201.4. When applicable, the bracketed language should be included.

Sentencing for five or more prior offenses is set out in Ark. Code Ann. § 5-65-111.

AMCI 2d 9316-VF
STAGE TWO: FELONY IN PRESENCE OF CHILD—VERDICT FORM

We, the Jury, having found that *(defendant)* _____ **committed the offense of** _____ *(felony)* **in the presence of a child, fix** (his) (her) **sentence at a term of** _____ *[(not less than 1 and not more than 10 years) (not more than 5 years)]* **in the Arkansas Department of Correction.**

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9204 when the jury has determined in Stage One that the defendant committed a designated felony in the presence of a child. *See* AMCI 2d 8203-EXP and 8303-VF. This form should be provided to the jury in addition to the appropriate standard verdict form fixing the term of imprisonment for the underlying felony.

The 2019 amendment in Act 324 altered the listing of eligible felonies. The eligible felonies now are Capital murder, § 5-10-101; Murder in the first degree, § 5-10-102; Murder in the second degree, § 5-10-103; Aggravated robbery, § 5-12-103; a felony offense of assault or battery under § 5-13-201 et seq.; Rape, § 5-14-103; Sexual assault in the second degree, § 5-14-125; and a felony offense of domestic battering or assault on a family or household member under § 5-26-303–§ 5-26-309.

The 2019 amendment removed Manslaughter and added Aggravated Robbery, Rape and Sexual Assault in the Second Degree as eligible felonies.

Prior to the 2019 amendment, the eligible felonies were listed as the bracket for ten years should be used for the following offenses:

Homicide, assault, battery, domestic battering, or assault on a family member or household member.

The bracket for five years should be used for the offense of aggravated cruelty to a dog, cat, or equine.

COMMENT

Ark. Code Ann. § 5-4-702.

See Act 1220 of 2015, Ark. Code Ann. § 5-4-703, providing for a court-imposed additional fine of $25 for specified offenses in which a child was the victim or that was committed in child's presence. Act 714 of 2017 increased the fine from $25 to $100.

"Once the jury determines that the defendant has committed a designated felony in the presence of a child, the jury has no option other than imposing a sentence of not less than one year nor more than ten year's imprisonment."

Sullivan v. State, 366 Ark. 183, 234 S.W.3d 285 (2006).

(Text continued on page 93-39)

AMCI 2d 9317-VF
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—METHAMPHETAMINE OFFENSE IN PRESENCE OF CERTAIN PERSONS

Do you, the Jury, having found that _____ *(defendant)* **committed the offense of** (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine) (in the presence of (a minor) (an elderly person) (an incompetent person)) (with (a minor) (an elderly person) (an incompetent person) in the same home or building where the methamphetamine was being manufactured or where the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used) (with (a minor) (an elderly person) (an incompetent person) present in the same immediate area or in the same vehicle at the time of _____ (*defendant's*) arrest for the offense), **fix** (his) (her) **sentence at an extended term of 10 years in the Arkansas Department of Correction, such term to be in addition to any term of imprisonment imposed for the offense of** (manufacture of methamphetamine) (possession of drug paraphernalia with purpose to manufacture methamphetamine).

YES _____

NO _____

_____

FOREPERSON

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9205 when the jury has determined in Stage One that the defendant committed a methamphetamine offense in the presence of certain persons. *See* AMCI 2d 8204-EXP and 8304-VF. This form should be provided to the jury in addition to the appropriate standard verdict form fixing the term of imprisonment for the underlying methamphetamine offense.

COMMENT

Ark. Code Ann. § 5-64-407.

AMCI 2d 9318-VF
STAGE TWO: STANDARD VERDICT FORM—CONSECUTIVE SENTENCE RECOMMENDATION

If you sentence _____ (defendant) to two or more terms of imprisonment, you may make ONE of the following recommendations:

_____ We, the Jury, recommend that all of the terms of imprisonment be consecutive.

_____ We, the Jury, recommend that none of the terms of imprisonment be consecutive.

[_____ We, the Jury, recommend that the terms of imprisonment for the following offenses be consecutive: _____ *(list offenses).*]

_____

FOREMAN

NOTE ON USE

When the defendant has been convicted of multiple offenses, this verdict form should be used in conjunction with AMCI 2d 9112 and the appropriate Stage Two standard verdict forms. *See* AMCI 2d 9301-VF through 9306-VF. This form should be used only when defendant has been convicted of multiple felonies each punishable by imprisonment. Do not use when defendant has been convicted of a felony and a misdemeanor since a sentence to imprisonment for a felony and a sentence to imprisonment for a misdemeanor run concurrently. Ark. Code Ann. § 5-4-403(c)(1).

If the defendant has been convicted of only two offenses, do not include the third alternative recommendation.

COMMENT

Ark. Code Ann. § 5-4-403 allows the jury to make a nonbinding recommendation that terms of imprisonment be consecutive.

AMCI 2d 9319-VF
TERRORISM—STAGE TWO VERDICT FORM—ENHANCEMENT FOR INJURY TO CERTAIN PERSONS

Do you, the Jury, having found that _____ *(defendant)* committed the offense of terrorism and having further found that _____ *(defendant's)* act of terrorism caused serious physical injury to a (law enforcement officer) (or) (fire fighter) (or) (emergency service technician) providing emergency assistance at the scene of the alleged act of terrorism, fix (his) (her) sentence at an extended term of 10 years in the Arkansas Department of Correction, such term to be in addition to any term of imprisonment imposed for the offense of terrorism.

YES _____

NO _____

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9207 when the jury has determined in Stage One that the defendant's act of terrorism caused serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism. *See* AMCI 2d 5506-EXP and 5506-VF. This form should be provided to the jury in addition to AMCI 2d 9301-VF, the standard Class Y felony verdict form fixing the term of imprisonment for the underlying offense of terrorism.

COMMENT

Ark. Code Ann. § 5-54-206.

AMCI 2d 9320-VF
STAGE TWO: STANDARD VERDICT FORM—PREVIOUS CONVICTION OF AGGRAVATED CRUELTY TO A DOG, CAT, OR HORSE

We, the Jury, having found (defendant) guilty of the offense of aggravated cruelty to a dog, cat, or horse, further find that within 5 years preceding the commission of the current offense, (defendant) has [been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse] [been convicted of an equivalent penal law of (another state) (a foreign jurisdiction)] and fix (his) (her) sentence at:

(A) A term of _____ in the Arkansas Department of Correction; or

(B) A fine of _____ dollars; or

(C) Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREMAN

We, the Jury, having found (defendant) guilty of the offense of aggravated cruelty to a dog, cat, or horse, do not find that within 5 years preceding the commission of the current offense, (defendant) has [been convicted of a prior offense of aggravated cruelty to a dog, cat, or horse] [been convicted of an equivalent penal law of (another state) (a foreign jurisdiction)] and fix (his) (her) sentence at:

(A) A term of _____ in the Arkansas Department of Correction; or

(B) A fine of _____ dollars; or

(C) Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9208 when the State alleges that the offense committed by defendant should be classified more seriously (from a Class D felony to a Class C felony) because for conduct occurring within 5 years of the current offense, the defendant has previously been convicted of aggravated cruelty to a dog, cat, or horse. The court should insert in the verdict form the appropriate sentence ranges depending on the classification of the offense in the statute defining the offense.

COMMENT

Each alleged act of the offense of aggravated cruelty to a dog, cat, or horse

committed against more than one dog, cat or horse may constitute a separate offense. For the sole purpose of calculating the number of previous offenses, all offenses of aggravated cruelty to a dog, cat or horse that are committed against one or more dogs, cats, or horses, as part of the same criminal episode are a single offense. "Criminal episode" means an act that constitutes the offense of aggravated cruelty to a dog, cat, or horse, committed by a person against one or more dogs, cats, or horses within a period of twenty-four hours.

AMCI 2d 9321-VF
STAGE TWO: TARGETING LAW ENFORCEMENT OFFICER, FIRST RESPONDER, OR THEIR FAMILY

We, the Jury, having found that _____ *(defendant)* in committing the offense of _____ targeted a (law enforcement officer) (first responder) (family member of a (law enforcement officer) (first responder)), fix (his) (her) sentence at a term of _____

[not more than one year]

[not less than six months but not more than two years]

[not less than two years but no more than ten years]

in the Arkansas Department of Correction.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9209 when the jury has determined in Stage One that the defendant targeted the victim. *See* AMCI 2d 8206-EXP and 8305-VF. This form should be provided to the jury in addition to the appropriate standard verdict form fixing the term of imprisonment for the underlying offense.

Use the appropriate bracket for the underlying offense. The bracket for one year or less should be used if the person is convicted of a Class A misdemeanor or an unclassified misdemeanor with a possible sentence greater than ninety days' imprisonment. The bracket for the range of 6 months to two years should be used if the person is convicted of a Class C felony, Class D felony, or an unclassified felony. The bracket for the range of two years to ten years should be used if the person is convicted of a Class Y felony, Class A felony, or Class B felony.

COMMENT

Ark. Code Ann. § 5-4-704.

AMCI 2d 9322-VF
STAGE TWO: STANDARD VERDICT FORM—ENHANCED FELONY—CRIMINAL TRESPASS

We, the Jury, having found (defendant) guilty of the offense of criminal trespass, further find that (defendant) has committed two or more previous acts of criminal trespass and fix (his) (her) sentence at:

A. A term of _____ in the Arkansas Department of Correction; or

B. A fine of _____ dollars; or

C. Both a term of _____ in the Arkansas Department of Correction and a fine of _____ dollars.

_____

FOREPERSON

We, the Jury, having found (defendant) guilty of the offense of criminal trespass, do not find that (defendant) has committed two or more previous acts of criminal trespass and fix (his) (her) sentence at:

A. A term of _____ in the county jail; or

B. A fine of _____ dollars; or

C. Both a term of _____ in the county jail and a fine of _____ dollars.

_____

FOREPERSON

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9210 when the State alleges that the offense committed by defendant should be classified more seriously because the defendant has two (2) or more previous convictions for a Class A misdemeanor violation of Ark. Code Ann. § 5-39-203 or § 5-39-305. The court should insert in the verdict form the appropriate sentence ranges depending on the classification of the offense in the statute defining the offense.

AMCI 2d 9323-VF
STAGE TWO: EXTENDED TERM OF IMPRISONMENT—TARGETING VICTIM AT CHURCH OR OTHER PLACE OF WORSHIP—SERIOUS VIOLENT FELONY

We, the Jury, having found that _____ *(defendant)* in committing the offense of _____ (*offense*) selected the victim because of (his) (her) (their) presence on church or place of worship grounds, fix (his) (her) sentence at a term of _____ *(not less than one year but not more than 10 years)* in the Arkansas Department of Correction.

_____

FOREMAN

NOTE ON USE

This verdict form should be used in conjunction with AMCI 2d 9211 when the jury has determined in Stage One that the defendant selected the victim because of his presence on church or place of worship grounds. This form should be provided to the jury in addition to the appropriate standard verdict form fixing the term of imprisonment for the underlying offense.

COMMENT

Ark. Code Ann. § 5-4-707.

CHAPTER 94

TRANSFER AND PAROLE ELIGIBILITY

SYNOPSIS

9400. Introductory Note

9401. Transfer Eligibility: Felonies Below Transfer Eligibility Line On Sentencing Grid

9402. Transfer Eligibility: Felonies Above Transfer Eligibility Line On Sentencing Gri

9403. Parole Eligibility: Offenses Committed Before January 1, 1994

9404. Release Eligibility: Seventy Percent Law

9404-A. Release Eligibility: Seventy Percent Law [Act 570]

9405. Release Eligibility: Act 1009 of 1995 Sections (c) And (d) (Two Or Three Strikes Prosecutions)

9406. Release Eligibility: Prior Violent or Felony Sex Offender (Ark. Code Ann. § 16-93-609)

AMCI 2d 9400
INTRODUCTORY NOTE:

Release eligibility is determined by the date of the offense. Offenses committed prior to January 1, 1994 are subject to a variety of parole eligibility statutes and AMCI 9403 should be used. Offenses committed on or after January 1, 1994 are subject to transfer eligibility statutes and the transfer eligibility line on the sentencing grid adopted by the Arkansas Sentencing Commission. AMCI 9401 should be used for offenses below the line and AMCI 9402 should be used for offenses above the line.

Offenses included under Act 1326 of 1995 (seventy percent law) and Act 1135 of 1997 should use AMCI 9404 if they have the applicable offense dates.

Habitual offenders charged under subsections (c) and (d) ("two strikes" and "three strikes") should use AMCI 9405 and should have offense dates after July 28, 1995.

Act 570 of 2011 created Ark. Code Ann. § 16-93-612, which outlines the statutes that should be considered when determining a defendant's parole eligibility. The statute explains:

> For an offender serving a sentence for a felony committed on or after January 1, 1994, Ark. Code Ann. § 16-93-614 governs that person's parole eligibility, unless otherwise noted and except:
>
> If the felony is murder in the first degree, kidnapping, if a Class Y felony, aggravated robbery, rape, trafficking of persons (Class Y) or causing a catastrophe, and the offense occurred after July 28, 1995, Ark. Code Ann. § 16-93-618 governs that person's parole eligibility; or
>
> If the felony is manufacturing methamphetamine, Ark. Code Ann. § 5-64-423(a), or the former Ark. Code Ann. § 5-64-401, or possession of drug paraphernalia with the intent to manufacture methamphetamine, the former Ark. Code Ann. § 5-64-403(c)(5), and the offense occurred after April 9, 1999, Ark. Code Ann. § 16-93-618 governs that person's parole eligibility.
>
> If the felony is battery in the second degree, § 5-13-202, aggravated assault, § 5-13-204, terroristic threatening, § 5-13-301, domestic battering in the second degree, § 5-26-304, or residential burglary, § 5-39- 201, and the offense occurred on or after April 1, 2015, § 16-93-619 governs that person's parole eligibility. Arkansas Code Ann. § 16-93-619 provides that an inmate sentenced for one of those felonies is eligible for discretionary transfer to the Department of Community Correction by the Parole Board after having served one-third (1/3) or one-half (1/2) of his or her sentence, with credit for meritorious good time, depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half (1/2) of the time to which his or her sentence is commuted.

AMCI 2d 9401
TRANSFER ELIGIBILITY: FELONIES BELOW TRANSFER ELIGIBILITY LINE ON SENTENCING GRID

In your deliberations on the sentence to be imposed, you may consider the possibility of the transfer of _____ (defendant) from the Department of Correction to the Department of Community Correction. After he serves 1/3 of any term of imprisonment to which you may sentence him, he will be eligible for transfer from the Department of Correction to the Department of Community Correction. If transfer is granted, he will be released from prison and placed under post-prison supervision. The term of imprisonment may be reduced further, up to 1/6 of any period you impose, if he earns the maximum amount of meritorious good time during his imprisonment.

Meritorious good time is time-credit awarded for good behavior or for certain achievements while an inmate is confined in a Department of Correction or Community Correction facility, or in a jail while awaiting transfer to one of those facilities. An inmate may be awarded up to one day for every day served. Accrual of meritorious good time does not reduce the length of a sentence but does decrease the time the defendant is required to be imprisoned before he becomes eligible for transfer to community supervision, under which the remainder of his sentence will be served.

NOTE ON USE

This instruction should be given only in cases involving felonies located below the transfer eligibility line on the sentencing grid established by the Arkansas Sentencing Commission under Ark. Code Ann. § 16-90-802. The awarding of meritorious good time is governed by Ark. Code Ann. §§ 12-29-201 *et seq.*

"Post-prison supervision" is defined by Ark. Code Ann. § 16-93-1202(b)(15) in terms of "community punishment programs"; "community punishment programs" are those programs enumerated in §§ 16-93-1202(b)(1)–(15). The court may wish to define post-prison supervision by giving examples of the types of programs the defendant may be eligible to enter upon being transferred to community supervision after serving a sentence of imprisonment in the Department of Correction.

The location of this instruction is discretionary with the court, but it is contemplated that it would ordinarily be given in Stage Two immediately following the basic punishment instruction from either Chapter 91 or 92. *See* AMCI 2d 9000-INTRO.

Ark. Code Ann. § 16-90-120 (e) addresses eligibility for parole and transfer for defendants convicted on or after July 31, 2007 who have had their sentence enhanced for employing a firearm in the commission of a felony. To be eligible, they must serve either one-third (1/3) (AMCI 2d 9401) or one-half (1/2) (AMCI

2d 9402) of the enhanced portion of the term of imprisonment with credit for meritorious good time and depending on the seriousness determination made by the Arkansas Sentencing Commission so long as the underlying felony was not

(i) Murder in the first degree,

(ii) Kidnapping that is a Class Y felony,

(iii) Aggravated robbery,

(iv) Rape,

(v) Causing a catastrophe,

(vi) Manufacture of methamphetamine, or

(vii) Possession of drug paraphernalia with the intent to manufacture methamphetamine.

COMMENT

Ark. Code Ann. § 16-93-1301.

This instruction, given with AMCI 9404, contained accurate statements of the law and the court did not err in refusing to give defendant's proffered, non-model jury instruction. *Bond v. State*, 374 Ark. 332 (2008).

The trial court did not abuse its discretion when it refused to instruct the jury on the law related to transfer and parole eligibility found in AMCI 2d 9401 and AMCI 2d 9404-A. The trial court determined that that the instructions would "not serve any purpose" and that they would confuse the jurors. *Finfrock v. State*, 2017 Ark. App. 90.

AMCI 2d 9402
TRANSFER ELIGIBILITY: FELONIES ABOVE TRANSFER ELIGIBILITY LINE ON SENTENCING GRID

In your deliberations on the sentence to be imposed, you may consider the possibility of the transfer of _____ *(defendant)* from the Department of Correction to the Department of Community Correction. Eligibility for transfer from the Department of Correction to community supervision is as follows:

I.

_____ *(Offense)* is punishable by life imprisonment or by imprisonment for a term of years. Persons under sentence of life imprisonment are not eligible for transfer.

II.

If you sentence _____ *(defendant)* to imprisonment for a term of years, after he serves ½ of the term you impose he will be eligible for transfer from the Department of Correction to the Department of Community Correction. If transfer is granted, he will be released from prison and placed under post-prison supervision. The term of imprisonment may be reduced further, up to ¼ of the period you impose, if the defendant earns the maximum amount of "meritorious good time" during his imprisonment. [However, persons under a sentence of life imprisonment are not eligible for meritorious good time.]

Meritorious good time is time-credit awarded for good behavior or for certain achievements while an inmate is confined in a Department of Correction or Community Correction facility, or in a jail while awaiting transfer to one of those facilities. An inmate may be awarded up to one day for every day served. Accrual of meritorious good time does not reduce the length of a sentence but does decrease the time the defendant is required to be imprisoned before he becomes eligible for transfer to community supervision, under which the remainder of his sentence will be served.

NOTE ON USE

Where the defendant has been convicted of an offense for which either a sentence of life imprisonment or a term of years can be imposed, then both sections I and II should be given; and, in these cases only, the bracketed sentence at the end of the first paragraph of section II should be given as well.

Where the defendant has been convicted of an offense for which a term of years, but not life imprisonment, may be imposed, only section II should be given.

This instruction should be given only in cases involving felonies located above the transfer eligibility line on the sentencing grid established by the Arkansas Sentencing Commission under Ark. Code Ann. § 16-90-802. The awarding of

(Text continued on page 94-7)

meritorious good time is governed by Ark. Code Ann. §§ 12-29-201 *et seq.*

"Post-prison supervision" is defined by Ark. Code Ann. § 16-93-1202(b)(15) in terms of "community punishment programs"; "community punishment programs" are those programs enumerated in §§ 16-93-1202(b)(1)-(15). The court may wish to define "post-prison supervision" by giving examples of the types of programs the defendant may be eligible to enter upon being transferred to community supervision after serving a sentence of imprisonment in the Department of Correction.

The location of this instruction is discretionary with the court, but it is contemplated that it would ordinarily be given in Stage Two immediately following the basic punishment instruction from either Chapter 91 or 92. *See* AMCI 2d 9000-INTRO.

The trial court in *Goff v. State,* 341 Ark. 567, 19 S.W.3d 579 (2000), gave a modified version of AMCI 2d 9402 describing meritorious good time and the possibility of parole. The defendant objected to the prosecutor explaining the instruction to the jury, but the supreme court concluded that the trial court cured any error in permitting the prosecutor's argument by admonishing the jury, at the defendant's request, that the prosecutor's arguments were not the law. The supreme court also ruled that the trial court did not abuse its discretion by re-reading AMCI 2d 9402 in response to the jury's question concerning the effect of a life sentence.

Ark. Code Ann. § 16-90-120 (e) addresses eligibility for parole and transfer for defendants convicted on or after July 31, 2007 who have had their sentence enhanced for employing a firearm in the commission of a felony. To be eligible, they must serve either one-third (⅓) (AMCI 2d 9401) or one-half (½) (AMCI 2d 9402) of the enhanced portion of the term of imprisonment with credit for meritorious good time and depending on the seriousness determination made by the Arkansas Sentencing Commission so long as the underlying felony was not

(i) Murder in the first degree,

(ii) Kidnapping that is a Class Y felony,

(iii) Aggravated robbery,

(iv) Rape,

(v) Causing a catastrophe,

(vi) Manufacture of methamphetamine, or

(vii) Possession of drug paraphernalia with the intent to manufacture methamphetamine.

AMCI 2d 9403
PAROLE ELIGIBILITY: OFFENSES COMMITTED BEFORE JANUARY 1, 1994

In your deliberations on the sentence to be imposed, you may consider the possibility that _____ (defendant) will be paroled. Eligibility for parole is as follows:

I.

_____ *(Offense)* **is punishable by life imprisonment or a term of years. Persons under sentence of life imprisonment are not eligible for parole.** [If _____ *(defendant)* has previously been convicted of (first degree murder) (rape) (aggravated robbery), then he will not be eligible for parole.]

II.

Class A and B First Offenders Over 21 Years of Age

If you sentence _____(defendant) to imprisonment for a term of years, he will be eligible for parole after he serves ⅓ of the term you impose. This term of imprisonment may be reduced further, to ⅙ of the period you impose, if the defendant earns the maximum amount of meritorious good time during his imprisonment.

[If you find that a deadly weapon was used in committing the offense, then _____ *(defendant)* will be eligible for parole after serving ½ of the sentence you impose. This term of imprisonment may be reduced further, to ¼ of the period you impose, if he earns the maximum amount of meritorious good time during his imprisonment.] [However, persons under a sentence of life imprisonment are not eligible for meritorious good time.]

III.

Class Y Felony First Offenders; Class A and B Felony Second Offenders

If _____ (defendant) has one previous incarceration in a correctional facility; then he will be eligible for parole after he serves ½ of any sentence to imprisonment you impose. This term of imprisonment may be reduced further, to ¼ of the period you impose, if he earns the maximum amount of meritorious good time during his imprisonment.

IV.

Class Y, A and B Felony Third Offenders

If _____ (defendant) has two previous incarcerations in a correctional facility, then he will be eligible for parole after he serves ¾ of any sentence of imprisonment you impose. This term of imprisonment may be reduced further, to ⅜ of the period you impose, if he

earns the maximum amount of meritorious good time during his imprisonment.

V. Felony First Offenders (Other Than Class Y Offenses) Under the Age of 21 Years

If _____ (defendant) has three [or more] **previous incarcerations in a correctional facility, then he will become eligible for parole.**

VI. Felony First Offenders (Other Than Class Y Offenses) Under the Age of 21 Years

_____ *(Defendant)* **will be eligible for parole at any time unless a minimum time to be served, consisting of not more than ⅓ of the sentence you assess, is imposed by the court. A court-imposed minimum (⅓ of the sentence assessed by you, the jury) may itself be reduced by half, to ⅙ of the sentence assessed by you, if the defendant earns the maximum amount of meritorious good time during his imprisonment.**

VII Class C or D Felony Offenders

If you sentence _____ (defendant) to imprisonment for a term of years, he will be eligible for parole after he serves ⅓ of the term you impose.

This term of imprisonment may be reduced further, to ⅙ of the period you impose, if he earns the maximum amount of meritorious good time during his imprisonment.

Meritorious Good Time

Meritorious good time is time-credit awarded for good behavior or for certain achievements while an inmate is confined in a Department of Correction or Community Correction facility, or in a jail while awaiting transfer to one of those facilities. An inmate may be awarded up to one day for every day served. Accrual of meritorious good time does not reduce the length of a sentence but does decrease the time the defendant is required to be imprisoned before he becomes eligible for transfer to community supervision, under which the remainder of his sentence will be served.

NOTE ON USE

Use this instruction only in trials for offenses committed prior to January, 1, 1994. *See* Ark. Code Ann. §§ 16-93-607 to -609 (Michie 1987) (parole); 16-93-1301(b) (Supp. 1993) (application of pre-1994 law in prosecutions after January 1, 1994); and 12-29-201 (Supp. 1993) (meritorious good time).

The number of an inmate's prior incarcerations is administratively determined by the Department of Correction from records available to it. Though the jury, in sentencing, may take into account the number of previous incarcerations, the jury does not make a finding on the number of previous incarcerations, this being

solely within the province of the Department.

If the number of previous incarcerations becomes an issue, then the jury should be instructed on the effect each possible finding would have on parole. If the defendant has been convicted of an offense for which he can receive life imprisonment or a term of years, give both parts I and II of this instruction. If the defendant is charged with first-degree murder, rape, or aggravated robbery and has previously been convicted of one of these offenses, the bracketed portion of part I should be given.

The "deadly weapon" language in subpart II should be given only where the jury has made a finding in Stage One of the trial that the defendant used a deadly weapon.

The definition of meritorious good time should be given in every case.

The location of this instruction is discretionary with the court, but it is contemplated that it would ordinarily be given in Stage Two immediately following the basic punishment instruction from either Chapter 91 or 92. *See* AMCI 2d 9000-INTRO.

In *Upton v. State,* 68 Ark. App. 84, 4 S.W. 3d 510 (1999), the jury imposed a fine and 105 days of jail time on the defendant. The trial judge added a provision that the defendant would not receive credit for meritorious good time. On appeal, the Court of Appeals determined that under Ark. Code Ann. § 12-41-101 only the county sheriff has the authority to grant or deny meritorious good time to an inmate of a county jail.

COMMENT

The use of this instruction was approved in *Hill v. State,* 318 Ark. 408, 416, 887 S.W.2d 275 (1994).

AMCI 2d 9404
RELEASE ELIGIBILITY: SEVENTY PERCENT LAW

In your deliberations on the sentence to be imposed, you may consider the possibility that _____ (defendant) will be paroled or transferred to community correction supervision. Eligibility for parole or transfer to community correction supervision is as follows:

I.

_____ (Offense) is punishable by life imprisonment or a term of years. Persons under sentence of life imprisonment are not eligible for parole or transfer to community correction supervision.

II.

If you sentence _____ (defendant) to imprisonment for a term of years, he will be eligible for parole or transfer to community correction supervision after he serves seventy percent (70%) of the term of his sentence. This percentage of the imprisonment will not be reduced by the earning of meritorious good time during his imprisonment.

III.

If you sentence _____ (defendant) to imprisonment for a term of years for [the manufacture of methamphetamine] [or] [the possession of drug paraphernalia with the intent to manufacture methamphetamine], he will be eligible for parole or transfer to community correction supervision after he serves seventy percent (70%) of the term of his sentence. The defendant may earn meritorious good time while imprisoned which could reduce the time he is required to serve before becoming eligible for parole or transfer to community correction supervision. However, meritorious good time shall not reduce the defendant's eligibility for parole or transfer to community correction supervision to less than fifty percent (50%) of the original term of his sentence.

NOTE ON USE

Use AMCI 2d 9404-A for offenses governed by Act 570 of 2011 (effective July 27, 2011).

This instruction should only be used in trials for the following offenses:

Offense	Committed on or after	Act reference
First degree murder;	July 28, 1995	Act 1326 of 1995
Class Y kidnapping	July 28, 1995	Act 1326 of 1995
Aggravated robbery;	July 28, 1995	Act 1326 of 1995
Rape	July 28, 1995	Act 1326 of 1995
Causing a catastrophe	July 28, 1995	Act 1326 of 1995
Manufacture of methamphetamine	Regardless of date	Act 363 of 2009

Possession of drug paraphernalia with intent to manufacture methamphetamine	Regardless of date	Act 363 of 2009

If the defendant is convicted of first degree murder, Class Y kidnapping, aggravated robbery, rape, or causing a catastrophe for which he can receive life imprisonment or a term of years, give both parts I and II of this instruction. If the defendant is convicted of the manufacture of methamphetamine, give parts I and III of this instruction. If the defendant is convicted of possession of drug paraphernalia with intent to manufacture methamphetamine, give part III of the instruction.

The location of this instruction is discretionary with the court, but it is contemplated that it would ordinarily be given in Stage Two immediately following the basic punishment instruction from either Chapter 91 or 92. *See* AMCI 2d 9000-INTRO.

Ark. Code Ann. § 16-90-120 (e) addresses eligibility for parole and transfer for defendants convicted on or after July 31, 2007 who have had their sentence enhanced for employing a firearm in the commission of a felony. Part II of this instruction is impacted as follows: Defendants are not eligible until the person serves seventy percent (70%) of the enhanced imprisonment time to which the person is sentenced for using a firearm if the underlying felony was any of the following:

(i) Murder in the first degree (§ 5-10-102);

(ii) Kidnapping that is a Class Y felony (§ 5-11-102);

(iii) Aggravated robbery (§ 5-12-103);

(iv) Rape (§ 5-14-103); or

(v) Causing a catastrophe (§ 5-38-202);

(vi) Trafficking methamphetamine (§ 5-64-440(b)(1));

(vii) Manufacturing methamphetamine (§ 5-64-423(a)) or the former (§ 5-64-401); or

(viii) Possession of drug paraphernalia with the purpose to manufacture methamphetamine (former (§ 5-64-403(c)(5)).

§ 16-90-120(e)(1)(B) impacts Parts I and III of the instruction requiring service of seventy percent (70%) of the enhanced imprisonment time to which the person is sentenced for using a firearm if the underlying felony was manufacturing methamphetamine (§ 5-64-423(a)) or the former § 5-64-401, or possession of drug paraphernalia with the intent to manufacture methamphetamine (former § 5-64-403(c)(5)), or trafficking methamphetamine § 5-64-440(b)(1).

A person who commits the offense of possession of drug paraphernalia with the intent to manufacture methamphetamine (§ 5-64-443) after July 27, 2011 shall not

be subject to the provisions of § 16-90-120.

AMCI 2d 9404-A
RELEASE ELIGIBILITY: SEVENTY PERCENT LAW [Act 570]

In your deliberations on the sentence to be imposed, you may consider the possibility that [_____] *(defendant)* will be paroled or transferred to community correction supervision. Eligibility for parole or transfer to community correction supervision is as follows:

I.

[_____] *(Offense)* is punishable by life imprisonment or a term of years. Persons under sentence of life imprisonment are not eligible for parole or transfer to community correction supervision.

II.

If you sentence [_____] *(defendant)* to imprisonment for a term of years, he will be eligible for parole or transfer to community correction supervision after he serves seventy percent (70%) of the term of his sentence. This percentage of the imprisonment will not be reduced by the earning of meritorious good time during his imprisonment.

III.

If you sentence [_____] *(defendant)* to imprisonment for a term of years for [the manufacture of methamphetamine] [or] [trafficking methamphetamine] [or] [possession of drug paraphernalia with the intent to manufacture methamphetamine], he will be eligible for parole or transfer to community correction supervision after he serves seventy percent (70%) of the term of his sentence. The defendant may earn meritorious good time while imprisoned which could reduce the time he is required to serve before becoming eligible for parole or transfer to community correction supervision. However, meritorious good time shall not reduce the defendant's eligibility for parole or transfer to community correction supervision to less than fifty percent (50%) of the original term of his sentence.

NOTE ON USE

This instruction should only be used in trials for the following offenses committed on or after July 27, 2011:

Offenses committed on or after July 27, 2011
Murder in the first degree, § 5-10-102
Kidnapping, Class Y felony, § 5-11-102
Aggravated robbery, § 5-12-103
Rape, § 5-14-103
Trafficking of persons (Class Y felony), § 5-18-103
Causing a catastrophe, § 5-38-202(a)
Manufacturing methamphetamine, § 5-64-423(a)
Trafficking methamphetamine, § 5-64-440(b)(1)

If the defendant is convicted of first degree murder, Class Y kidnapping, aggravated robbery, rape, trafficking of persons, or causing a catastrophe, for which he can receive life imprisonment or a term of years, give part I and part II of this instruction. If the defendant is convicted of the manufacture of methamphetamine or trafficking methamphetamine, for which he can receive life imprisonment or a term of years, give part I and part III of this instruction. If the defendant is convicted of manufacture of methamphetamine, for which he can only receive a term of years, give only part III of the instruction.

The location of this instruction is discretionary with the court, but it is contemplated that it would ordinarily be given in Stage Two immediately following the basic punishment instruction from either Chapter 91 or 92. *See* AMCI 2d 9000-INTRO.

Ark. Code Ann. § 16-90-120(e)(1)(A) addresses eligibility for parole and transfer for defendants convicted of certain offenses committed on or after July 27, 2011 who have had their sentence enhanced for employing a firearm in the commission of a felony. Part II of this instruction is impacted as follows:

Defendants are not eligible until the person serves seventy percent (70%) of the enhanced imprisonment time to which the person is sentenced for using a firearm if the underlying felony was murder in the first degree (§ 5-10-102); kidnapping that is a Class Y felony (§ 5-11-102); aggravated robbery (§ 5-12-103); rape (§ 5-14-103); or causing a catastrophe (§ 5-38-202).

Ark. Code Ann. § 16-90-120(e)(1)(B) addresses eligibility for parole and transfer for defendants convicted of certain offenses committed on or after July 27, 2011 who have had their sentence enhanced for employing a firearm in the commission of a felony. Part III of this instruction is impacted as follows:

Defendants are not eligible until the person serves seventy percent (70%) of the enhanced imprisonment time to which the person is sentenced for using a firearm if the underlying felony was manufacture of methamphetamine (§ 5-64-423(a)) or trafficking methamphetamine (§ 5-64-440(b)(1)). The defendant may earn meritorious good time while imprisoned which could reduce the time he is required to serve before becoming eligible for parole or transfer to community correction supervision. However, meritorious good time shall not reduce the defendant's eligibility for parole or transfer to community correction supervision to less than fifty percent (50%) of the original term of his enhanced imprisonment term.

COMMENT

Ark. Code Ann. § 16-93-618.

The trial court did not abuse its discretion when it refused to instruct the jury on the law related to transfer and parole eligibility found in AMCI 2d 9401 and AMCI 2d 9404-A. The trial court determined that that the instructions would "not serve any purpose" and that they would confuse the jurors. *Finfrock v. State*, 2017 Ark. App. 90.

AMCI 2d 9405
RELEASE ELIGIBILITY: ACT 1009 OF 1995 SECTIONS (C) AND (D) (TWO OR THREE STRIKES PROSECUTIONS)

In your deliberations on the sentence to be imposed, you may consider the possibility that _____ *(defendant)* will be paroled or transferred to supervision by the Department of Community Correction. Eligibility for parole or transfer is as follows:

I.

_____ *(Offense)* is punishable by life imprisonment or a term of years. Persons under sentence of life imprisonment are not eligible for parole or transfer.

II.

If you sentence _____ *(defendant)* to imprisonment for a term of years, he will be eligible for parole after he reaches the age of 55 and his regular parole or transfer eligibility date.

III.

After _____ *(defendant)* serves ⅓ of any term of imprisonment to which you may sentence him, he will be eligible for transfer from the Department of Correction to the Department of Community Correction. If transfer is granted, he will be released from prison and placed under post-prison supervision. The term of imprisonment may be reduced further, to ⅙ of any period you impose, if he earns the maximum amount of meritorious good time during his imprisonment.

[or]

If you sentence _____ *(defendant)* to imprisonment for a term of years, after he serves ½ of the term you impose he will be eligible for transfer from the Department of Correction to the Department of Community Correction. If transfer is granted, he will be released from prison and placed under post-prison supervision. The term of imprisonment may be reduced further, to ¼ of the period you impose, if the defendant earns the maximum amount of "meritorious good time" during his imprisonment. [However, persons under a sentence of life imprisonment are not eligible for meritorious good time.]

Meritorious good time is time-credit awarded for good behavior or for certain achievements while an inmate is confined in a Department of Correction or Community Correction facility, or in a jail while awaiting transfer to one of those facilities. An inmate may be awarded up to one day for every day served. Accrual of meritorious good time does not reduce the length of a sentence but does decrease the time the defendant is required to be imprisoned before he becomes eligible for transfer to community supervision, under which the remainder of his sentence will be served.

NOTE ON USE

Use this instruction only for offenders charged under A.C.A. § 5-4-501(c) and (d). Offenders charged under subsections (a) and (b) should be instructed with AMCI 9401 or 9402.

Under subsection (c), the only term of years available is 40–80 years. All crimes listed are Class Y offenses except for murder in the second degree, which is a Class B offense.

Under subsection (d), Class Y offenses can only receive life sentences. There are Class A, B and C offenses which can receive a term of years and which may be above or below the transfer eligibility line.

COMMENT

Acts 1009 and 1101 of 1995 contained language codified at A.C.A. § 5-4-501 (subsections (c) and (d)) and A.C.A. § 16-93-1302 (f) (age 55 requirement). Act 1197 of 1997 added a cross-reference to A.C.A. § 5-4-501 which modifies the "without eligibility of parole or community punishment transfer" language with the age 55 and "regular parole or transfer eligibility" language contained in A.C.A. § 16-93-1302(f).

AMCI 2d 9406
RELEASE ELIGIBILITY: PRIOR VIOLENT OR FELONY SEX OFFENDER ARK. CODE ANN. § 16-93-609

In your deliberations on the sentence to be imposed, you may consider the possibility that _____ *(defendant)* will be paroled or transferred to community correction supervision. Eligibility for parole or transfer to community correction supervision is as follows:

I.

A person who is under sentence for _____ *[(murder in the first degree, § 5-10-102), (rape, § 5-14-103), or (aggravated robbery, § 5-12-103),]*

and who has previously been convicted of _____ *[(murder in the first degree, § 5-10-102), (rape, § 5-14-103), or (aggravated robbery, § 5-12-103)]*

shall not be eligible for release on parole.

II.

A person who is under sentence for _____ *[(a violent felony offense) (or) (a felony sex offense)]*

and who has previously been convicted of a _____ *[(violent felony offense) (or) (felony sex offense)]*

shall not be eligible for release on parole.

NOTE ON USE

Part I applies to the listed offenses committed subsequent to March 24, 1983. Part II applies to the following violent felony offenses or felony sex offenses listed in Ark. Code Ann. § 5-4-501(d)(2), committed subsequent to August 13, 2001:

Murder in the first degree, § 5-10-102;

Murder in the second degree, § 5-10-103;

Kidnapping, § 5-11-102;

Aggravated robbery, § 5-12-103;

Residential burglary, § 5-39-201;

Aggravated residential burglary, § 5-39-204;

Rape, § 5-14-103;

Battery in the first degree, § 5-13-201;

Terroristic act, § 5-13-310;

Sexual assault in the first degree, § 5-14-124;

Sexual assault in the second degree, § 5-14-125;

Domestic battering in the first degree, § 5-26-303;

Unlawful discharge of a firearm from a vehicle, § 5-74-107;

Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;

A felony attempt, solicitation, or conspiracy to commit: Capital murder, § 5-10-101; Murder in the first degree, § 5-10-102; Murder in the second degree, § 5-10-103; Kidnapping, § 5-11-102; Aggravated robbery, § 5-12-103; Residential burglary, § 5-39-201; Aggravated residential burglary, § 5-39-204; Rape, § 5-14-103; Battery in the first degree, § 5-13-201; or Domestic battering in the first degree, § 5-26-303.

A conviction of a comparable felony involving violence from another jurisdiction.

COMMENT

Ark. Code Ann. § 16-93-609.

CHAPTER 95

ILLUSTRATIVE INSTRUCTIONS

SYNOPSIS

9501. Prosecution for Aggravated Robbery

9501. Prosecution for Burglary

AMCI 9501
PROSECUTION FOR AGGRAVATED ROBBERY

STATEMENT OF FACTS

John Doe is charged with the aggravated robbery of ABC Liquor, committed after July 28, 1995. Doe has one prior conviction of aggravated robbery with a deadly weapon and is charged with being armed with a firearm when he committed the instant offense. The store owner's testimony was that Doe said he had a gun in his coat pocket. The owner also related that he saw a glint from a metal object in Doe's pocket and believed that Doe was in fact armed.

A suggested set of instructions in recommended sequence [The actual instructions should be consulted for the most current version]:

	(AMCI 2d Number)	
1.	101.	Respective Duties of Judge and Jury.
2.	103.	Jury — Personal Observations and Experiences.
3.	104.	Credibility of Witnesses.
4.	107.	Burden of Proof.
5.	108.	Indictment or Information not Evidence.
6.	109.	Presumption of Innocence.
7.	110.	Reasonable Doubt.
8.	301.	Lesser Included Offenses: Introductory Instructions.
9.	1201.	Aggravated Robbery.
10.	302; 1202.	Lesser Included Offenses: Transitional Instruction; Robbery.
11.	1201-EXP.	Aggravated Robbery — Stage One Verdict Explanation — Multiple Possible Verdicts.
12.	8103.	Stage One: Concluding Instructions — Jury Not to Consider Punishment.
13.	8104; 1201-VF.	Stage One: Standard Closing Instructions; Aggravated Robbery — Stage One Verdict Form — Multiple Possible Verdicts.
14.	9001-INTRO.	Stage Two: Additional Evidence Respecting Sentencing.
15.	9202.1	Stage Two: Habitual Offender — Previous Series Violent Felony Conviction
16.	9404.	Release Eligibility (Seventy Percent Law).
17.	9111; 9312.1-VF.	Stage Two: Standard Closing Instructions; Stage Two — Verdict Form — Serious-Violent-Felony Habitual Offender.

TEXT OF SUGGESTED INSTRUCTIONS

1. (AMCI 2d 101)

(a) The faithful performance of your duties as jurors is essential to the administration of justice.

(b) It is my duty as judge to inform you of the law applicable to this case by instructions, and it is your duty to accept and follow them as a whole, not singling

out one instruction to the exclusion of others. You should not consider any rule of law with which you may be familiar unless it is included in my instructions.

(c) It is your duty to determine the facts from the evidence produced in this trial. You are to apply the law as contained in these instructions to the facts and render your verdict upon the evidence and law. Do not do any research on the internet or otherwise; or any investigation about the case or the parties on your own. You should not permit sympathy, prejudice, or like or dislike of any party to this action or of any attorney to influence your findings in this case.

(d) In deciding the issues you should consider the testimony of the witnesses and the exhibits received in evidence. The introduction of evidence in court is governed by law. You should accept without question my rulings as to the admissibility or rejection of evidence, drawing no inferences that by these rulings I have in any manner indicated my views on the merits of the case.

(e) Opening statements, remarks during the trial, and closing arguments of the attorneys are not evidence but are made only to help you in understanding the evidence and applicable law. Any argument, statements, or remarks of attorneys having no basis in the evidence should be disregarded by you.

(f) I have not intended by anything I have said or done, or by any questions that I may have asked, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness who testified. If anything that I have done or said has seemed to so indicate, you will disregard it.

(g) You cannot use cell phones and other communication devices for any purpose when in the jury room during deliberations.

2. (AMCI 2d 103)

In considering the evidence in this case you are not required to set aside your common knowledge, but you have a right to consider all the evidence in the light of your own observations and experiences in the affairs of life.

3. (AMCI 2d 104)

You are the sole judges of the weight of the evidence and the credibility of the witnesses. In determining the credibility of any witness and the weight to be given his testimony, you may take into consideration his demeanor while on the witness stand, any prejudice for or against a party, his means of acquiring knowledge concerning any matter to which he testified, any interest he may have in the outcome of the case, the consistency or inconsistency of his testimony, its reasonableness or unreasonableness, and any other fact or circumstance tending to shed light upon the truth or falsity of his testimony.

4. (AMCI 2d 107)

The State must prove beyond a reasonable doubt each element of the offense charged. On the other hand, the defendant is not required to prove his innocence.

5. (AMCI 2d 108)

The filing of an information is merely the means by which a person is brought to trial.

It is not evidence and is not to be considered by you in determining the guilt or innocence of John Doe.

6. (AMCI 2d 109)

There is a presumption of the defendant's innocence in a criminal prosecution. In this case John Doe is presumed to be innocent. That presumption of innocence attends and protects him throughout the trial and should continue and prevail in your minds until you are convinced of his guilt beyond a reasonable doubt.

7. (AMCI 2d 110)

Reasonable doubt is not a mere possible or imaginary doubt. It is a doubt that arises from your consideration of the evidence and one that would cause a careful person to pause and hesitate in the graver transactions of life. A juror is satisfied beyond a reasonable doubt if after an impartial consideration of all the evidence he has an abiding conviction of the truth of the charge.

8. (AMCI 2d 301)

John Doe is charged with aggravated robbery. This charge includes the lesser offense of robbery.

You may find the defendant guilty of one of these offenses or you may acquit him outright.

If you have a reasonable doubt of the guilt of the defendant on the greater offense, you may find him guilty only of the lesser offense. If you have a reasonable doubt as to the defendant's guilt of both offenses, you must find him not guilty.

9. (AMCI 2d 1201)

John Doe is charged with the offense of aggravated robbery. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That, with the purpose of committing a theft, threatened to immediately employ physical force upon another; and

Second: That he was armed with a deadly weapon or represented by words or conduct that he was armed with a deadly weapon.

"Physical force" means any bodily impact, restraint, or confinement.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury.

"Purpose." — A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

10. (AMCI 2d 302; 1202)

If you have a reasonable doubt of the defendant's guilt on the charge of aggravated robbery, you will then consider the charge of robbery. To sustain this charge the State must prove beyond a reasonable doubt that, with the purpose of

committing a theft, John Doe threatened to immediately employ physical force upon another.

"Physical force" means any bodily impact, restraint, or confinement.

"Purpose." — A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

11. (AMCI 2d 1201-EXP)

If you find John Doe guilty of aggravated robbery or robbery, you will so indicate on the verdict form provided you. You will also make a finding about whether John Doe was armed with a deadly weapon, as requested on the form.

If you reach a verdict of not guilty, you will indicate this on the form.

12. (AMCI 2d 8103)

In your deliberations the subject of punishment is not to be discussed or considered by you. If you return a verdict of guilty, the matter of punishment will be submitted to you separately.

13. (AMCI 2d 8104; 1201-VF)

Members of the jury, when you reach the jury room you will elect one of your members as foreman.

You will consider and complete one of the following verdict forms:

We, the Jury, find beyond a reasonable doubt that John Doe is guilty of aggravated robbery.

_____

FOREMAN

If your verdict is guilty of aggravated robbery, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that John Doe was armed with a deadly weapon?

YES _____

NO _____

_____

FOREMAN

We, the Jury, find beyond a reasonable doubt that John Doe is guilty of robbery.

_____

FOREMAN

We, the Jury, find John Doe not guilty.

_____

FOREMAN

All twelve of you must agree on the verdict, but only the foreman need sign the verdict form.

STAGE ONE: CLOSING ARGUMENTS

The jury will now retire to the jury room to deliberate.

(JURY DELIBERATION AND STAGE ONE VERDICT)

(If the Jury returns a verdict of guilt of aggravated robbery and finds that the defendant was armed with a deadly weapon, for example, then before additional evidence on sentencing is presented, AMCI 2d 9001-INTRO should be given.)

14. (AMCI 2d 9001-INTRO)

You have found John Doe guilty of aggravated robbery. The law provides that, after a jury returns a verdict of guilt but before it sentences, the State and the defendant may present additional evidence to be considered by the jury in its deliberations on sentencing. In your deliberations on the sentence to be imposed, you may consider both the evidence presented in the first stage of this trial, where you rendered a verdict on guilt, and the evidence to be presented in this part of the trial. You will now hear evidence that you may consider in arriving at an appropriate sentence.

(PRESENTATION OF ADDITIONAL EVIDENCE SUCH AS VICTIM IMPACT STATEMENT OR CHARACTER EVIDENCE.)

15. (AMCI 2d 9202.1)

You have found John Doe guilty of the offense of aggravated robbery and of having been armed with a deadly weapon. The State has also alleged that he is subject to an extended term of imprisonment as a serious-violent-felony habitual offender.

The offense of aggravated robbery, armed with a deadly weapon, is a serious felony involving violence. It is my duty to instruct you that John Doe has previously been convicted one time of aggravated robbery and of having been armed with a deadly weapon.

The offense of aggravated robbery, armed with a deadly weapon, when committed by a serious-violent-felony habitual offender is punishable by imprisonment in the Arkansas Department of Correction for a term of not less than 40 years to nor more than 80 years, or life.

16. (AMCI 2d 9404)

In your deliberations on the sentence to be imposed, you may consider the possibility that John Doe will be paroled or transferred to community punishment supervision.

Eligibility for parole or transfer to community punishment supervision is as follows:

I.

Aggravated robbery is punishable by life imprisonment or a term of years. Persons under sentence of life imprisonment are not eligible for parole or transfer to community punishment supervision.

II.

If you sentence John Doe to imprisonment for a term of years, he will be eligible for parole or transfer to community punishment supervision after he serves seventy percent (70%) of the term of his sentence. This percentage of the imprisonment will not be reduced by the earning of meritorious good time during his imprisonment.

Meritorious good time is time-credit awarded for good behavior or for certain achievements while an inmate is confined in a Department of Correction or Community Punishment facility, or in a jail while awaiting transfer to one of those facilities. An inmate may be awarded up to one day for every day served. Accrual of meritorious good time does not reduce the length of a sentence but does decrease the time the defendant is required to be imprisoned before he becomes eligible for transfer to community supervision, under which the remainder of his sentence will be served.

17. (AMCI 2d 9111; 9312.1-VF)

After hearing arguments of counsel, you will again retire to consider and complete the following verdict form(s):

We, the Jury, fix the sentence of John Doe at a term of _____*(not less than 40 years nor more than 80 years, or life)* imprisonment in the Arkansas Department of Correction.

_____

FOREMAN

All twelve of you must agree on the sentence, but only the foreman need sign the verdict form.

(STAGE TWO: CLOSING ARGUMENTS)

The jury will now retire to the jury room to deliberate.

AMCI 2d 9502
PROSECUTION FOR BURGLARY

STATEMENT OF FACTS

Richard Roe is charged with commercial burglary, allegedly committed at the Mickey Bookstore. The bookstore manager, Drudge, testified that he found Roe in the store when Drudge arrived at work at 8:00 a.m. on Monday morning. Roe was going through a refrigerator in the employees' break room in the rear of the store when his presence was detected by Drudge.

Roe testified that he came to the bookstore because he had heard that a salesman's position was open. In fact, the position had been filled two weeks previously. He found the front door open, came in, and discovered no one was present. Being hungry — he had been unemployed for six months — he sought something to eat with the intention of paying for it from his first paycheck, he said.

The front door showed no signs of having been forced open. An expert testified that Roe's fingerprints were found on the cash register, which was empty, the previous day's receipts having been removed the preceding evening.

Neither the State nor the defendant requested an instruction on breaking or entering as a lesser included offense.

A suggested set of instructions in recommended sequence [The actual instructions should be consulted for the most current version]:

AMCI 2d Number		
1.	101.	Respective Duties Of Judge and Jury.
2.	103.	Jury — Personal Observations and Experiences.
3.	104.	Credibility of Witnesses.
4.	105.	Expert Witness.
5.	106.	Circumstantial Evidence.
6.	107.	Burden of Proof.
7.	108.	Indictment or Information not Evidence.
8.	109.	Presumption of Innocence.
9.	110.	Reasonable Doubt.
10.	301.	Lesser Included Offenses: Introductory Instruction.
11.	3902.	Commercial Burglary.
12.	302.	Lesser Included Offenses: Transitional Instruction.
	3904.	Criminal Trespass.
13.	8101.	Stage One: Standard Concluding Instructions — Findings.
	3904-EXP.	Trespass — Stage One Verdict Explanation — Multiple Possible Verdicts.
14.	8103.	Stage One: Standard Concluding Instructions — Jury Not to Consider Punishment.
15.	8104.	Stage One: Standard Closing Instructions.

AMCI 2d Number

	8301-VF.	Stage One: Standard Verdict Form.
	3904-VF.	Trespass — Stage One Verdict Form — Multiple Possible Verdicts.
16.	9001-INTRO.	Stage Two: Additional Evidence Respecting Sentencing.
17.	9107.	Stage Two: Standard Punishment Instruction—Misdemeanors.
18.	9111.	Closing Instructions.
	9308-VF.	Stage Two: Standard Verdict Form—Class B Misdemeanor.

TEXT OF SUGGESTED INSTRUCTIONS

1. (AMCI 2d 101)

(a) The faithful performance of your duties as jurors is essential to the administration of justice.

(b) It is my duty as judge to inform you of the law applicable to this case by instructions, and it is your duty to accept and follow them as a whole, not singling out one instruction to the exclusion of others. You should not consider any rule of law with which you may be familiar unless it is included in my instructions.

(c) It is your duty to determine the facts from the evidence produced in this trial. You are to apply the law as contained in these instructions to the facts and render your verdict upon the evidence and law. Do not do any research on the internet or otherwise; or any investigation about the case or the parties on your own. You should not permit sympathy, prejudice, or like or dislike of any party to this action or of any attorney to influence your findings in this case.

(d) In deciding the issues you should consider the testimony of the witnesses and the exhibits received in evidence. The introduction of evidence in court is governed by law. You should accept without question my rulings as to the admissibility or rejection of evidence, drawing no inferences that by these rulings I have in any manner indicated my views on the merits of the case.

(e) Opening statements, remarks during the trial, and closing arguments of the attorneys are not evidence but are made only to help you in understanding the evidence and applicable law. Any argument, statements, or remarks of attorneys having no basis in the evidence should be disregarded by you.

(f) I have not intended by anything I have said or done, or by any questions that I may have asked, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness who testified. If anything that I have done or said has seemed to so indicate, you will disregard it.

(g) You cannot use cell phones and other communication devices for any purpose when in the jury room during deliberations.

2. (AMCI 2d 103)

In considering the evidence in this case you are not required to set aside your

common knowledge, but you have a right to consider all the evidence in the light of your own observations and experiences in the affairs of life.

3. (AMCI 2d 104)

You are the sole judges of the weight of the evidence and the credibility of the witnesses. In determining the credibility of any witness and the weight to be given his testimony, you may take into consideration his demeanor while on the witness stand, any prejudice for or against a party, his means of acquiring knowledge concerning any matter to which he testified, any interest he may have in the outcome of the case, the consistency or inconsistency of his testimony, its reasonableness or unreasonableness, and any other fact or circumstance tending to shed light upon the truth or falsity of his testimony.

4. (AMCI 2d 105)

An expert witness is a person who has special knowledge, skill, experience, training, or education on the subject to which his testimony relates.

An expert witness may give his opinion on questions in controversy. You may consider his opinion in the light of his qualifications and credibility, the reasons given for his opinion, and the facts and other matters upon which his opinion is based.

You are not bound to accept an expert opinion as conclusive, but should give it whatever weight you think it should have. You may disregard any opinion testimony if you find it to be unreasonable.

5. (AMCI 2d 106)

A fact in dispute may be proved by circumstantial evidence as well as by direct evidence. A fact is established by direct evidence when, for example, it is proved by witnesses who testify to what they saw, heard, or experienced. A fact is established by circumstantial evidence when its existence can reasonably be inferred from other facts proved in the case. However, circumstantial evidence must be consistent with the guilt of the defendant and inconsistent with any other *reasonable conclusion.*

6. (AMCI 2d 107)

The State must prove beyond a reasonable doubt each element of the offense charged. On the other hand, the defendant is not required to prove his innocence.

7. (AMCI 2d 108)

The filing of an information is merely the means by which a person is brought to trial. It is not evidence and is not to be considered by you in determining the guilt or innocence of John Doe.

8. (AMCI 2d 109)

There is a presumption of the defendant's innocence in a criminal prosecution. In this case John Doe is presumed to be innocent. That presumption of innocence

attends and protects him throughout the trial and should continue and prevail in your minds until you are convinced of his guilt beyond a reasonable doubt.

9. (AMCI 2d 110)

Reasonable doubt is not a mere possible or imaginary doubt. It is a doubt that arises from your consideration of the evidence and one that would cause a careful person to pause and hesitate in the graver transactions of life. A juror is satisfied beyond a reasonable doubt if after an impartial consideration of all the evidence he has an abiding conviction of the truth of the charge.

10. (AMCI 2d 301)

Richard Roe is charged with commercial burglary. This charge includes the lesser offense of criminal trespass.

You may find the defendant guilty of one of these offenses or you may acquit him outright.

If you have a reasonable doubt of the guilt of the defendant on the greater offense, you may find him guilty only of the lesser offense. If you have a reasonable doubt as to the defendant's guilt of both offenses, you must find him not guilty.

11. (AMCI 2d 3902)

Richard Roe is charged with the offense of commercial burglary. To sustain this charge the State must prove the following things beyond a reasonable doubt:

First: That he entered or remained unlawfully in The Mickey Bookstore; and

Second: That he did so with the purpose of committing therein theft of property.

"Commercial occupiable structure" means a vehicle, building or other structure where any person carries on a business or other calling.

"Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to do so. A person who enters or remains in or upon premises that are, at the time, open to the public does so with license and privilege, regardless of his purpose, unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or some other person authorized by the owner. A license or privilege to enter or remain in or upon premises, only part of which is open to the public, is not a license or privilege to enter or remain in a part of the premises not open to the public.

"Purpose." — A person acts with purpose with respect to his conduct when it is his conscious object to engage in the conduct.

12. (AMCI 2d 302; 3904)

If you have a reasonable doubt of the defendant's guilt on the charge of commercial burglary, you will then consider the charge of criminal trespass. To sustain this charge the State must prove beyond a reasonable doubt that Richard Roe purposely entered or remained unlawfully upon the premises of another person.

"Premises" means occupiable structures and any real property.

The terms "enter or remain unlawfully" and "purposely" have previously been defined for you.

13. (AMCI 2d 8101; 3904-EXP)

If you find Richard Roe guilty of commercial burglary or criminal trespass, you will so indicate on a verdict form to be given you.

If you find Richard Roe guilty of criminal trespass, you will also make a finding about whether the premises was an occupiable structure.

The term occupiable structure has previously been defined for you.

If you reach a verdict of not guilty you will indicate this on the form.

14. (AMCI 2d 8103)

In your deliberations the subject of punishment is not to be discussed or considered by you. If you return a verdict of guilty, the matter of punishment will be submitted to you separately.

15. (AMCI 2d 8104; 8301-VF; 3904-VF)

Members of the jury, when you reach the jury room you will elect one of your members as foreman.

You will consider and complete one of the following verdict forms:

We, the Jury, find beyond a reasonable doubt that Richard Roe is guilty of commercial burglary.

_____

FOREMAN

We, the Jury, find beyond a reasonable doubt that Richard Roe is guilty of criminal trespass.

_____

FOREMAN

If your verdict is guilty of criminal trespass, you shall complete the following:

Do you, the Jury, find beyond a reasonable doubt that the premises was an occupiable structure?

YES _____

NO _____

_____

FOREMAN

We the Jury, find Richard Roe not guilty.

_____

FOREMAN

All twelve of you must agree on the verdict, but only the foreman need sign the verdict form.

(STAGE ONE: CLOSING ARGUMENTS)

The jury will now retire to the jury room to deliberate.

(JURY DELIBERATION AND STAGE ONE VERDICT)

(If the jury returns a verdict of guilt of criminal trespass in an occupiable structure, for example, then before additional evidence on sentencing is presented, AMCI 2d 9001-INTRO should be given.)

16. (AMCI 2d 9001-INTRO)

You have found Richard Roe guilty of criminal trespass. The law provides that, after a jury returns a verdict of guilty but before it sentences, the State and the defendant may present additional evidence to be considered by the jury in its deliberations on sentencing. In your deliberations on the sentence to be imposed, you may consider both the evidence presented in the first stage of this trial, where you rendered a verdict on guilt, and the evidence to be presented in this part of the trial. You will now hear evidence that you may consider in arriving at an appropriate sentence.

(PRESENTATION OF ADDITIONAL EVIDENCE SUCH AS VICTIM IMPACT STATEMENT OR CHARACTER EVIDENCE)

17. (AMCI 2d 9107)

You have found Richard Roe guilty of criminal trespass. Criminal trespass is punishable by imprisonment in the county jail for not more than 90 days, or by a fine not exceeding $500, or by both imprisonment and a fine.

18. (AMCI 2d 9111; 9308-VF)

After hearing arguments of counsel, you will again retire to consider and complete the following verdict form:

We, the Jury, having found Richard Roe guilty of criminal trespass, fix his sentence at:

(A) A term of _____*(not more than 90 days)* in the county jail; OR

(B) A fine of _____*(not exceeding $500)*; OR

(C) Both a term of _____*(not more than 90 days)* in the county jail and a fine of _____*(not exceeding $500).*

_____

FOREMAN

All twelve of you must agree on the verdict, but only the foreman need sign the verdict form.

(STAGE TWO: CLOSING ARGUMENTS)

The jury will now return to the jury room to deliberate.

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5-1-102(14) . . . . . AMCI 2d 1101

5-1-102(15) . . . . AMCI 2d 7302; AMCI 2d 7306.4

5-1-102(17) . . . . . AMCI 2d 1313; AMCI 2d 3806

5-1-102(18).AMCI 2d 701; AMCI 2d 704; AMCI 2d 709

5-1-104. . . . . AMCI 2d 1001

5-1-105. . . . . AMCI 2d 7306

5-1-110 . . . . AMCI 2d 1001-A; AMCI 2d 1002; A; AMCI 2d 7401; PUF

5-1-110(b). . . . . AMCI 2d 301

5-1-110(c). . . . . AMCI 2d 301

5-1-110(d)(1). . . . . AMCI 2d 1001

5-1-111 . . . . . AMCI 2d 601

5-1-111(a)(1). . . . . AMCI 2d 704–707

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5-1-111(c). . . . AMCI 2d 704–707; AMCI 2d 1305; AMCI 2d 2609-D; AMCI 2d 5302-D; AMCI 2d 7303-D; AMCI 2d 7306.4; AMCI 2d 7308-D; AMCI 2d 7309-D; AMCI 2d 7310-D; AMCI 2d 7313-D

5-1-111(e)(2) . . AMCI 2d 205; AMCI 2d 1009-EXP

5-2-201(1) . . . . . AMCI 2d 5421

5-2-201(2) . . . . . AMCI 2d 5421

5-2-202. . . . AMCI 2d 113; AMCI 2d 405; AMCI 2d 501–504; AMCI 2d 1002–1005; AMCI 2d 1007; AMCI 2d 1101–1103; AMCI 2d 1105; AMCI 2d 1201, 1202; AMCI 2d 1301; X; AMCI 2d 1302–1304; A; AMCI 2d 1305–1307; AMCI 2d 1310, 1311; AMCI 2d 1312-EXP; AMCI 2d 1313; AMCI 2d 1316, 1317; AMCI 2d 1406, 1407; AMCI 2d 1410; A; AMCI 2d 1412; AMCI 2d 2603; AMCI 2d 2605, 2606; AMCI 2d 2606.1; AMCI 2d 2610; P; AMCI 2d 2611, 2612; AMCI 2d 2701–2703; AMCI 2d 2705–2708; AMCI 2d 3602–3607; AMCI 2d 3702; A; AMCI 2d 3703–3710; A; AMCI 2d 3711–3713; AMCI 2d 3718, 3719; AMCI 2d 3721; AMCI 2d 3802, 3803; AMCI 2d 3805; AMCI 2d 3807; AMCI 2d 3901–3904; AMCI 2d 4101, 4102; AMCI 2d 4102.1; AMCI 2d 4103–4105; AMCI 2d 5304, 5305; AMCI 2d 5307–5311; AMCI 2d 5402; AMCI 2d 5413; AMCI 2d 5503–5509; AMCI 2d 6417; AMCI 2d 7115; AMCI 2d 7306; AMCI 2d 7402

5-2-202(1) . . . . . AMCI 2d 6415

5-2-202(2).AMCI 2d 64.443; AMCI 2d 5403; AMCI 2d 5418.2, 5418.3; AMCI 2d 6415; AMCI 2d 6418; AMCI 2d 6418.1, 6418.2; AMCI 2d 6419–6421

5-2-203. . . . . AMCI 2d 7306.4

5-2-203(a). . . . . AMCI 2d 1001, 1002

5-2-203(b).AMCI 2d 1002; AMCI 2d 7306.4; AMCI 2d 8205-EXP

5-2-204 . . . . . AMCI 2d 602

5-2-205 . . . . . AMCI 2d 603

5-2-206(c). . . . . AMCI 2d 604

5-2-206(e). . . . . AMCI 2d 604

[References are to instructions]

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Code	Text Sec.
5-2-207	AMCI 2d 605; AMCI 2d 609
5-2-208	AMCI 2d 606
5-2-209	AMCI 2d 607
5-2-301	AMCI 2d 609
5-2-301(6)	AMCI 2d 609
5-2-312	AMCI 2d 609, 610
5-2-312(a)(2)	AMCI 2d 609
5-2-401	AMCI 2d 401
5-2-403	AMCI 2d 403
5-2-403(b)	AMCI 2d 401
5-2-404(b)	AMCI 2d 401-D
5-2-406	AMCI 2d 401; AMCI 2d 405
5-2-601	AMCI 2d 706
5-2-601(2)	AMCI 2d 705
5-2-601(3)	AMCI 2d 704, 705
5-2-601(4)	AMCI 2d 704
5-2-601(5)	AMCI 2d 707; AMCI 2d 709
5-2-604	AMCI 2d 702
5-2-605	AMCI 2d 703
5-2-606	AMCI 2d 704; AMCI 2d 708.1
5-2-607	AMCI 2d 705, 706
5-2-608	AMCI 2d 706
5-2-609	AMCI 2d 707
5-2-610	AMCI 2d 708
5-2-612	AMCI 2d 708.1
5-2-613	AMCI 2d 709
5-2-614	AMCI 2d 705; AMCI 2d 710; AMCI 2d 1317
5-2-614(a)	AMCI 2d 704–707; AMCI 2d 710
5-2-614(b)	AMCI 2d 710
5-2-615	AMCI 2d 704, 705
5-2-620	AMCI 2d 704–707
5-3-101	AMCI 2d 502-D2; AMCI 2d 503-D2; AMCI 2d 504-D2; AMCI 2d 6419, 6420
5-3-103	AMCI 2d 506
5-3-201	AMCI 2d 501; AMCI 2d 502-D1
5-3-202	AMCI 2d 502
5-3-203	AMCI 2d 501, 502; AMCI 2d 6411
5-3-204	AMCI 2d 502-D1
5-3-301	AMCI 2d 503
5-3-302	AMCI 2d 503-D1
5-3-401	AMCI 2d 504
5-3-402	AMCI 2d 505
5-3-403	AMCI 2d 504
5-3-404	AMCI 2d 504
5-3-405	AMCI 2d 504-D1

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Code	Text Sec.
5-4-101(6)	AMCI 2d 64.441, 64.442
5-4-103	AMCI 2d 8000
5-4-103(b)(3)	AMCI 2d 9109
5-4-103(b)(4)	AMCI 2d 8103
5-4-104	AMCI 2d 9202
5-4-201	AMCI 2d 9102–9105; AMCI 2d 9107; AMCI 2d 9202
5-4-201(d)	AMCI 2d 9108
5-4-203(d)	AMCI 2d 4102-AD
5-4-401	AMCI 2d 9101
5-4-402	AMCI 2d 64.444-VF
5-4-403	AMCI 2d 9112-EXP; AMCI 2d 9318-VF
5-4-403(c)(1)	AMCI 2d 9112-EXP; AMCI 2d 9318-VF
5-4-501	AMCI 2d 4001; AMCI 2d 9201.3; A; AMCI 2d 9201.4; AMCI 2d 9405
5-4-501(a)	AMCI 2d 9202
5-4-501(a)(6) to (7)	AMCI 2d 9313-VF
5-4-501(b)	AMCI 2d 9202
5-4-501(b)(6) to (7)	AMCI 2d 9313-VF
5-4-501(c)	AMCI 2d 9202; AMCI 2d 9202.1, 9202.2; AMCI 2d 9405
5-4-501(c)(2)	AMCI 2d 9202.1
5-4-501(c)(3)	AMCI 2d 9312.1-VF
5-4-501(d)	AMCI 2d 9202; AMCI 2d 9202.1, 9202.2; AMCI 2d 9405
5-4-501(d)(1)	AMCI 2d 9202.2
5-4-501(d)(1)(A)	AMCI 2d 9202.2
5-4-501(d)(2)	AMCI 2d 9202.2; AMCI 2d 9406
5-4-501(g)	AMCI 2d 9202.1, 9202.2
5-4-502	AMCI 2d 9000
5-4-505	AMCI 2d 9201.3
5-4-602	AMCI 2d 1008
5-4-603(c)	AMCI 2d 9110
5-4-604	AMCI 2d 1008
5-4-604(8)	Form 1
5-4-605	Form 2
5-4-618	AMCI 2d 1009-EXP
5-4-702	AMCI 2d 7111-B; AMCI 2d 8303-VF; AMCI 2d 9204; AMCI 2d 9316-VF
5-4-702(a)	AMCI 2d 8203-EXP
5-4-702(b)	AMCI 2d 8203-EXP
5-4-703	AMCI 2d 9204; AMCI 2d 9316-VF
5-4-704	AMCI 2d 8206-EXP; AMCI 2d 8305-VF; AMCI 2d 9209; AMCI 2d 9321-VF
5-4-705	AMCI 2d 8206-EXP

[References are to instructions]

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Code	Text Sec.
5-4-707	AMCI 2d 8207-EXP; AMCI 2d 8306-VF; AMCI 2d 9211; AMCI 2d 9322-VF
5-6-607	AMCI 2d 708.1
5-10-101	AMCI 2d 1001; AMCI 2d 1007
5-10-101(2)	AMCI 2d 1001-A
5-10-101(a)(1)	AMCI 2d 1001-A; AMCI 2d 1001-AD
5-10-101(a)(1) to (2)	AMCI 2d 1006
5-10-101(a)(3) to (5)	AMCI 2d 1007
5-10-101(a)(6)	AMCI 2d 1007
5-10-101(a)(9)	AMCI 2d 1001; AD
5-10-101(b)	AMCI 2d 1001-AD
5-10-102	AMCI 2d 1002
5-10-102(a)(1)	AMCI 2d 1002-AD
5-10-102(a)(2)	AMCI 2d 1003
5-10-102(b)	AMCI 2d 1002-AD
5-10-103	AMCI 2d 1003
5-10-103(a)(1)	AMCI 2d 1003
5-10-104	AMCI 2d 1004; A
5-10-104(a)(4)	AMCI 2d 1002-AD
5-10-104(a)(4)(B)	AMCI 2d 1006
5-10-105	AMCI 2d 1005
5-10-105(B)	AMCI 2d 9201.4; AMCI 9315-VF
5-10-105(a)(1)(A)	AMCI 2d 9201.4; AMCI 9315-VF
5-10-105(a)(1)(c)	AMCI 2d 1005
5-10-105(c)	AMCI 2d 1005
5-11-101	AMCI 2d 1316
5-11-102	AMCI 2d 1101
5-11-103	AMCI 2d 1102
5-11-104	AMCI 2d 1103
5-11-105	AMCI 2d 1104
5-11-106	AMCI 2d 1105
5-12-101	AMCI 2d 1201, 1202
5-12-102	AMCI 2d 1202
5-12-103	AMCI 2d 1201
5-12-103(c)	AMCI 2d 1201-VF
5-13-201	AMCI 2d 1301; A
5-13-201(a)(3)	AMCI 2d 1301
5-13-201(a)(4)	AMCI 2d 1301-B
5-13-201(a)(5)(6)	AMCI 2d 1301-X; AMCI 2d 1301-XB
5-13-201(a)(5)(B)	AMCI 2d 1301
5-13-201(b)	AMCI 2d 1301-AD
5-13-202	AMCI 2d 1302
5-13-203	AMCI 2d 1303
5-13-204	AMCI 2d 1304

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Code	Text Sec.
5-13-205	AMCI 2d 1305
5-13-206	AMCI 2d 1306
5-13-207	AMCI 2d 1307
5-13-208	AMCI 2d 1313
5-13-211	AMCI 2d 1304-A
5-13-301(a)(1)	AMCI 2d 1310
5-13-301(b)(1)	AMCI 2d 1311
5-13-302	AMCI 2d 1315
5-13-310	AMCI 2d 1312
5-14-101	AMCI 2d 1101; AMCI 2d 1408; AMCI 2d 1410; AMCI 2d 2801
5-14-102(b)	AMCI 2d 1411-AD-S
5-14-102(c)	AMCI 2d 1411-AD-S
5-14-102(d)	AMCI 2d 1411-AD-M; AMCI 2d 1411-AD-S
5-14-103	AMCI 2d 1401
5-14-103(D)	AMCI 2d 1401-AD
5-14-103(D)(ii)	AMCI 2d 1401-AD
5-14-103(a)(1)(C)	AMCI 2d 1401-AD
5-14-103(a)(1)(C)(ii)	AMCI 2d 1401-AD
5-14-103(a)(2)	AMCI 2d 1411-AD-M
5-14-103(a)(3)(A)	AMCI 2d 301
5-14-103(c)(2)	AMCI 2d 9101
5-14-104	AMCI 2d 1402-OBS
5-14-105	AMCI 2d 1403-OBS
5-14-106	AMCI 2d 1404-OBS
5-14-107	AMCI 2d 1405-OBS
5-14-108	AMCI 2d 1406-OBS
5-14-109	AMCI 2d 1407-OBS
5-14-110	AMCI 2d 1408
5-14-110(a)(2)(B)	AMCI 2d 1401-AD; AMCI 2d 1408
5-14-111	AMCI 2d 1409
5-14-112	AMCI 2d 1410
5-14-112(b)	AMCI 2d 1410-A-OBS
5-14-113	AMCI 2d 1412
5-14-120	AMCI 2d 1412-OBS
5-14-121	AMCI 2d 1412.1-OBS
5-14-123	AMCI 2d 1314
5-14-124	AMCI 2d 1402; AMCI 2d 1411-AD-S
5-14-124(a)(1)(A)	AMCI 2d 1402
5-14-124(a)(1)(C)	AMCI 2d 1402
5-14-124(a)(1)(D)	AMCI 2d 1402
5-14-124(a)(2)	AMCI 2d 1402
5-14-124(a)(3)(B)	AMCI 2d 1401-AD
5-14-125	AMCI 2d 1403

[References are to instructions]

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Code	Text Sec.
5-14-125(a)(1)	AMCI 2d 1403
5-14-125(a)(2)	AMCI 2d 1403; AMCI 2d 1411-AD-M
5-14-125(a)(3)	AMCI 2d 1403; AD; AMCI 2d 1403-EXP; AMCI 2d 1403-VF
5-14-125(a)(3) to (5)	AMCI 2d 1411-AD-S
5-14-125(a)(3)(A) to (B)	AMCI 2d 301
5-14-125(a)(4)	AMCI 2d 1403
5-14-125(a)(5)	AMCI 2d 1403; AD
5-14-125(a)(5)(B)	AMCI 2d 1403-AD
5-14-125(a)(6)	AMCI 2d 1403
5-14-126	AMCI 2d 1404
5-14-126(a)(2)(B)	AMCI 2d 1401-AD
5-14-127	AMCI 2d 1411-AD-S
5-14-127(a)	AMCI 2d 1405
5-14-204(c)	AMCI 2d 1304
5-16-101	AMCI 2d 1406
5-16-101(d)	AMCI 2d 1406
5-16-102	AMCI 2d 1407
5-16-102(c)(2)	AMCI 2d 1407; EXP; AMCI 2d 1407-VF
5-16-110	AMCI 1408-OBS
5-17-101	AMCI 2d 7115
5-22-202	AMCI 2d 2802
5-25-101	AMCI 2d 2602; AMCI 2d 2706
5-25-101(2)	AMCI 2d 2607
5-25-101(3)	AMCI 2d 1302
5-25-101(4)	AMCI 2d 2608; AMCI 2d 2608.1
5-26-201	AMCI 2d 2601
5-26-201(b)	AMCI 2d 2601-AD
5-26-202	AMCI 2d 2602
5-26-202(b)	AMCI 2d 2602
5-26-203	AMCI 2d 2603
5-26-302	AMCI 2d 2610–2612
5-26-303	AMCI 2d 2610
5-26-303(a)(5)	AMCI 2d 2610
5-26-303(b)(2)	AMCI 2d 2610-P-EXP
5-26-304	AMCI 2d 2611
5-26-304(b)(2)	AMCI 2d 2610-P-EXP
5-26-305	AMCI 2d 2612
5-26-305(b)(2)	AMCI 2d 2610-P-EXP
5-26-306	AMCI 2d 1304; AMCI 2d 2612
5-26-312	AMCI 2d 2610-P-EXP
5-26-401	AMCI 2d 2604; AD
5-26-401(b)(1)(C)	AMCI 2d 2604-VF
5-26-501	AMCI 2d 2607

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Code	Text Sec.
5-26-501(c)	AMCI 2d 2607-AD
5-26-502	AMCI 2d 2608
5-26-503	AMCI 2d 2608.1
5-27-201	AMCI 2d 2606
5-27-202	AMCI 2d 2606.1
5-27-203(c)	AMCI 2d 2606-AD
5-27-204	AMCI 2d 2606.1
5-27-205	AMCI 2d 2605
5-27-221	AMCI 2d 2609; D; AMCI 2d 2706
5-27-221(a)(2)	AMCI 2d 2609
5-27-221(b)	AMCI 2d 2609
5-27-230	AMCI 2d 6421; EXP; AMCI 2d 6421-VF
5-27-230(a)(1)(A)	AMCI 2d 6421
5-27-230(a)(1)(B)	AMCI 2d 6421
5-27-302	AMCI 2d 2700; AMCI 2d 2706, 2707
5-27-303	AMCI 2d 2708
5-27-303(b)	AMCI 2d 301
5-27-305	AMCI 2d 2706
5-27-306	AMCI 2d 2705
5-27-306(b)(2)	AMCI 2d 2705-EXP; AMCI 2d 2705-VF
5-27-307	AMCI 2d 2707
5-27-403	AMCI 2d 301
5-27-601	AMCI 2d 2701–2705
5-27-602	AMCI 2d 2701
5-27-602(c)	AMCI 2d 2701
5-27-603	AMCI 2d 2702
5-27-605(a)	AMCI 2d 2703
5-27-605(b)	AMCI 2d 2704
5-28-101	AMCI 2d 2801, 2802; AMCI 2d 2805
5-28-103	AMCI 2d 2802
5-28-103(e)	AMCI 2d 2805
5-36-101	AMCI 2d 3601
5-36-101(12)(A)(ii)	AMCI 2d 3605-VF-REC
5-36-102	AMCI 2d 3601
5-36-103	AMCI 2d 707; AMCI 2d 3602; AMCI 2d 3603-VF-SERV
5-36-103(b)	AMCI 2d 3602-VF-PROP; AMCI 2d 3602.1-VF-PR
5-36-103(b)(1)(E)	AMCI 2d 3602-VF-PROP
5-36-103(b)(2)(D)	AMCI 2d 3602.2-VF-PROP
5-36-103(b)(2)(D)(ii)(a)	AMCI 2d 3602.2-VF-PROP
5-36-105	AMCI 2d 3604
5-36-106	AMCI 2d 3605
5-36-107	AMCI 2d 3606
5-36-108	AMCI 2d 3607

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Code	Text Sec.
5-36-116	AMCI 2d 3602-PR
5-36-123	AMCI 2d 3602.2-VF-PROP
5-36-123(a)	AMCI 2d 3602
5-36-123(d)	AMCI 2d 3602.2-VF-PROP
5-36-123(e)	AMCI 2d 3602.2-VF-PROP
5-36-124	AMCI 2d 3602.2-VF-PROP; AMCI 2d 3605
5-36-202	AMCI 2d 3608
5-36-204	AMCI 2d 3608-VF
5-36-303	AMCI 2d 3609
5-36-304	AMCI 2d 3610
5-36-704	AMCI 2d 3603
5-37-101	AMCI 2d 3701
5-37-200	AMCI 2d 3721
5-37-201	AMCI 2d 3702; A
5-37-202	AMCI 2d 3703
5-37-203	AMCI 2d 3704
5-37-204	AMCI 2d 3705
5-37-205	AMCI 2d 3706
5-37-206	AMCI 2d 3707
5-37-207	AMCI 2d 3708
5-37-208	AMCI 2d 3710; A
5-37-209	AMCI 2d 3712
5-37-210	AMCI 2d 3713
5-37-211	AMCI 2d 3714
5-37-212	AMCI 2d 3709
5-37-213	AMCI 2d 3711
5-37-218	AMCI 2d 3721
5-37-227	AMCI 2d 3717; EXP
5-37-301	AMCI 2d 4000
5-37-302	AMCI 2d 4001; EXP
5-37-302(a)	AMCI 2d 4001
5-37-302(a)	AMCI 2d 4001.1
5-37-302(b)	AMCI 2d 4001
5-37-304(a)	AMCI 2d 4001
5-37-505	AMCI 2d 3719, 3720
5-37-506	AMCI 2d 3720-A
5-37-525	AMCI 2d 3715
5-37-525(d)	AMCI 2d 3715-AD
5-38-101	AMCI 2d 3801; AMCI 2d 5503; AMCI 2d 5505; AMCI 2d 5507
5-38-202	AMCI 2d 3805; AMCI 2d 3805.1; AMCI 2d 5502, 5503; AMCI 2d 5505; AMCI 2d 5507
5-38-203	AMCI 2d 707; AMCI 2d 3806
5-38-204	AMCI 2d 3807
5-38-205	AMCI 2d 7116

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Code	Text Sec.
5-38-301	AMCI 2d 706; AMCI 2d 3802
5-38-302	AMCI 2d 3803
5-38-303	AMCI 2d 3804
5-39-201	AMCI 2d 706; AMCI 2d 3901, 3902
5-39-202	AMCI 2d 3903
5-39-203	AMCI 2d 706; AMCI 2d 3904; AMCI 2d 9210
5-39-204	AMCI 2d 3901.1
5-39-305	AMCI 2d 3904; AMCI 2d 9210
5-41-201	AMCI 2d 4101, 4102; AMCI 2d 4102.1; AMCI 2d 4103–4105
5-41-202	AMCI 2d 4101
5-41-203	AMCI 2d 4102; AMCI 2d 4102.1
5-41-204	AMCI 2d 4103
5-41-205	AMCI 2d 4104
5-41-206	AMCI 2d 4105
5-42-201	AMCI 2d 3716
5-42-204(d)	AMCI 2d 3716
5-52-101	AMCI 2d 5202
5-52-107	AMCI 2d 5203
5-53-101	AMCI 2d 5301
5-53-101(a)(3)	AMCI 2d 5302, 5303
5-53-102	AMCI 2d 5302
5-53-103	AMCI 2d 5303
5-53-104	AMCI 2d 5302-D
5-53-105	AMCI 2d 5302, 5303
5-53-106	AMCI 2d 5302, 5303
5-53-107	AMCI 2d 5302, 5303
5-53-108	AMCI 2d 5304
5-53-109	AMCI 2d 5305
5-53-110	AMCI 2d 5306
5-53-110(a)(1)	AMCI 2d 5306
5-53-111	AMCI 2d 5307
5-53-113	AMCI 2d 5308
5-53-114	AMCI 2d 5309
5-53-115	AMCI 2d 5310
5-53-201	AMCI 2d 5311
5-53-202	AMCI 2d 5311
5-53-202(b)(1)	AMCI 2d 5311-EXP; AMCI 2d 5311-VF
5-53-202(b)(1)(B)	AMCI 2d 5311-VF
5-53-202(c)	AMCI 2d 5311-AD
5-54-101	AMCI 2d 5401, 5402
5-54-101(11)	AMCI 2d 5421
5-54-103	AMCI 2d 5402, 5403
5-54-104	AMCI 2d 5404

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Code	Text Sec.
5-54-105	AMCI 2d 5405
5-54-105(b)	AMCI 2d 5405-VF
5-54-106	AMCI 2d 5406
5-54-107	AMCI 2d 5407
5-54-108	AMCI 2d 5408
5-54-110	AMCI 2d 5409
5-54-111	AMCI 2d 5410
5-54-112	AMCI 2d 5411
5-54-113	AMCI 2d 5412
5-54-114	AMCI 2d 5413
5-54-115	AMCI 2d 5414
5-54-116	AMCI 2d 5415
5-54-117	AMCI 2d 5416
5-54-118	AMCI 2d 5417
5-54-119	AMCI 2d 5418
5-54-119(b)	AMCI 2d 5418
5-54-119(c)	AMCI 2d 5418.2
5-54-119(e)	AMCI 2d 5418.3
5-54-120	AMCI 2d 5420
5-54-121	AMCI 2d 5421
5-54-122	AMCI 2d 5423
5-54-125	AMCI 2d 5422
5-54-125(b)	AMCI 2d 5422
5-54-125(d)	AMCI 2d 5422-VF
5-54-125(f)	AMCI 2d 5422
5-54-131	AMCI 2d 5419
5-54-201	AMCI 2d 5501; AMCI 2d 5503–5507
5-54-201(12)	AMCI 2d 5502
5-54-202(a)	AMCI 2d 5502
5-54-202(a)(1)(B)	AMCI 2d 5502
5-54-202(b)	AMCI 2d 5503
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